

BEFORE THE ANTI DOPING APPEAL PANEL Conference Room, Pragati Vihar

IN THE MATTER OF

WADA

.....

APPELLANT

Vs

Pradeep Sharma

.....

RESPONDENT

Hostel Lodhi Road, New Delhi -110 003

Appeal No. ADAP/02/2011

CORAM: JUSTICE C. K. MAHAJAN, CHAIRMAN

MR. KHAJAN SINGH, MEMBER

Dr. K. D. TRIPATHI, MEMBER

Present: Dr. Pradeep H. Gupta, Sr. Project Officer, NADA

Mr. Pardeep Sharma, Respondent in person

Ms. Kiran, advocate on behalf of WADA/NADA

06.07.2011

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 We are informed by NADA that WADA has since withdrawn its appeal before CAS.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 31/8/2010 holding that the respondent No. 1(athlete)

“The athlete has stated that he has been taken medicine under medical treatment (...) and produces medical prescriptions and laboratory reports. The same support the stand of the athlete that he is under medical treatment and further the substance found in his bodily specimens is also present in the medicines prescribed. The treatment has carried on for a long time. No steroid has been found in the bodily specimens of the athlete. The substance found is susceptible to unintentional Anti Doping Rule violations because of this general availability in medicinal products which have been prescribed to the athlete (...).

The athlete in our opinion has been able to establish grounds for elimination or reduction of period of ineligibility under Article 10.5.1 or Article 10.5.2. in view of thereof the period of ineligibility in the case of the athlete is thus eliminated in the present case.”

The respondent No. 1 (athlete) is a weightlifter at the National level. Sample urine was collected on 23/2/2010 during In-competition (62nd Men and 25th Senior National Weightlifting Championship) and he secured the Bronze medal. The sample A was tested on 15/3/2010, the analytical finding reported that the T/E ratio of 17:1 as against the threshold value of 4:1 after considering the measurement of uncertainty at 15%. The B sample was tested on 12/4/2010 with more or less the same finding as of sample A. The weightlifter/respondent admitted having taken (a medical treatment). 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 his case. The disciplinary panel was of the view the ground for elimination or reduction on the period of ineligibility was established.

WADA has assailed the impugned order before the appeal panel.

Testosterone is an anabolic agent as on WADA prohibited list. The same is prohibited in Competition as well as out of competition. Testosterone is not a specified substance. The analyzed sample shows the T/E ration greater than 4:1, 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 him to take the prohibited drug. He also did not disclose the fact of medical treatment in respect of (...) in the Dope Control form. 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 he had under medical supervision taken medications because of which his level of exogenous testosterone was higher than normal. The respondent had suffered from an (injury). He further contended that in 2004-05 there was no provision for taking TUE. He further stated that he was taking medication since Dec. 2009 to Jan 2010 and hence there was no requirement of seeking the exemptions. He further contended that the doctor who was treating him failed to inform him of the presence of banned/prohibited substance being administered to him. He was thus not aware that a prohibited substance was being administered to him. There is no fault or negligence on his part. He was undergoing treatment (...) and not aware of nature of the medicine and its implications in relation to Anti Doping Rule violation. He however admits having taken treatment (...) and detailed documentation is placed on records.

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 established ground for elimination/reduction on the reasoning that the substance found was susceptible to unintentional Anti Doping Rule violation because of its general availability of medicinal products which has been prescribed for (...).

In order to eliminate or reduce the period of ineligibility the respondent has to establish that he bears no fault or negligence for the violation of the Anti Doping Rules and if he 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 he took substances that caused adverse analytical finding in the test. Therefore we can safely conclude that the respondent would have discussed treatment therapy with his 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 he did not know or suspect and could not reasonably have known or suspected, even with the exercise of the utmost caution, that he had used or been administered the prohibited substance.

In the present case the respondent did not establish that he took any precaution or made any inquiry to assess whether the medical treatment he was following was free from prohibited substances. He did not either demonstrate having informed his doctor that he was an athlete, bound by a duty of care to avoid the ingestion of any prohibited substance. It is true that the medical treatment was prescribed by the respondent's doctor. However, the respondent can not hide behind his 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 he is prescribed contain prohibited substance. The respondent has not established that he exercised utmost caution and therefore that he 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 he was prescribed for a long period of time does not contain any prohibited substance. If the athlete fails to exercise this caution he 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 he 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 his body. In the present case the athlete concedes that he did not do anything to ensure that the medications he 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 since the respondent was provisionally suspended by Weightlifting Federation of India w.e.f. 15/3/2010 and he respected the same and did not participate in any competition. Thus he is entitled to receive credit for such period of provisional suspension the penalty imposed on him shall operate from the date of provisional suspension i.e. from 15/03/2010 in terms of article 10.9.2.

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