

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

Appeal No. ADAP/12/2011

IN THE MATTER OF

Manjeet Singh APPELLANT

Vs

NADA RESPONDENT

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

Present: Mr. Rahul, Advocate, NADA, Respondent
Mr. Rohit, Advocate and Mr. Abhishek Tiwari, Advocate alongwith
Mr. Manjeet Singh, Appellant

02.03.2012

ORDER

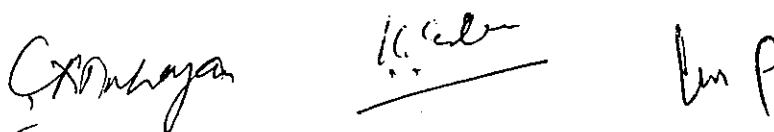
The present appeal is directed against the order of the Anti-Doping Disciplinary Panel who held that the appellant was guilty of Anti-Doping Rule Violation under Article 2.1 and imposed a sanction of one year commencing from the date of decision. It was held by the Panel that "the athlete is being held guilty of the offence only on account of the high quantity of the banned substance found in his bodily specimens, however, a part of the said substance having entered the body of the athlete on account of the application of the medicine Clostagen at the time of dressing of the wounds of the athlete cannot be ruled out. This is an important aspect which has to be considered while imposing the sentence."

Briefly stated that facts are the appellant/athlete met with a motorcycle accident at 29.05.2010 and suffered injuries while he was at the coaching camp for boxing at NIS, Patiala. Dr. Karanjeet Singh, doctor in-charge for boxing camp who was available in the camp, examined the appellant/athlete and prescribed his treatment. The Prescription Card was filled up by him Soframycin Cream for dressing of the respondent's injury. Surface area of the injury on the back of the appellant/athlete was large. The Prescription Card was handed over to the Nursing Staff of NIS, Patiala and the appellant/athlete was directed to give subsequent dressing from the Nursing Staff.

The urine sample of the appellant/athlete was collected at random on 08.06.2010. Sample 'A' was tested on 01.07.2010. The results revealed Adverse Analytical Finding for Anabolic Steroid (Metabolite of Clostebol). 'B' sample was tested on 16.07.2010 and the results analysis confirmed the presence of Anabolic Steroid.

We have heard Counsel for the parties at length and perused the available records. During the course of the hearing it was necessary to examine registers as well as a Member of the Nursing Staff. Dr. Karanjeet Singh was also cross examined at the behest of the appellant/athlete. From the records, it appears that some statement of the Nursing Staff was recorded before the Disciplinary Panel.

It may be stated at the outset, that the alleged violation in this present case is being treated as second offence and it was the contention of the Counsel for NADA that the appellant/athlete is a habitual offender. It appears from the record that athlete was suspended for one year by an order passed by the Indian Boxing Federation on 09.05.2009. The order was not challenged. However, it is contented by the athlete that at that point of time the NDTL laboratory was not an approved/ accredited laboratory by WADA and therefore, the present sanction should not hold good for the anti-doping violation if approved in the present case.



The Disciplinary Panel concluded that the period of ineligibility of one year in the present case would suffice and meet the ends of justice.

We have perused the order of the Disciplinary Panel. This Panel observes that the order of Disciplinary Panel is based on conjectures and surmises. The Disciplinary Panel has presumed that the registers maintained at the medical Centre at SAI, Patiala were tampered with by the appellant/athlete. The Disciplinary Panel further holds that the certificate of Dr. Karanjeet Singh does not inspire confidence and seems to be afterthought. The Disciplinary Panel further held that the non-mentioning of Clostagen Ointment in the Dope Control Form supports the case of NADA. The Disciplinary Panel has also observed that the maintenance of medical records at the Medical Centre, SAI Patiala were shoddy and that the tempering/fabrication/forging of records has been done carefully which aspect is supported by the letter of Dr. Manabendra Bhattacharyya, Senior Scientific Officer (Sports Medicine), Department of Sports Medicine, SAI, Patiala.

The Appeal Panel summoned the registers and recorded statement of Nursing Staff, namely Ms. Nirmala Devi and permitted the cross examination of Dr. Karanjeet Singh.

The appellant/athlete pleaded no fault or negligence. After accident as he took due care and caution to seek treatment only from SAI, Patiala and not from any other private doctor. The treatment was administered by the SAI Centre. The appellant/athlete was examined by Dr. Karanjeet Singh who prescribed application of Soframycin and there was no reason for the appellant/athlete to suspect anything other than Soframycin would be applied during dressing was done by the medical centre at SAI, Patiala. The perusal of the record maintained by the medical centre at SAI reveals that tampering/fabrication/forging records and to hold that the athlete/ appellant was responsible for the same contrary to the record.

We have carefully examined the registers as well as recorded statements of the Nursing Staff and the doctor in-charge. The original registers were also made available. This Panel is unable to hold that the records in the possession of the SAI, Patiala were manipulated by the athlete/ appellant.

It has been established before this Panel the treatment register in which the treatment of Manjeet Singh was recorded maintained by the Staff Nurse and kept in the medical room of NIS, Patiala under the custody of nursing staff at NIS Patiala. It has also been established before this Panel that the said register went missing over a few days after the notification of the doping offence. Duplicate register was prepared by the Nursing Staff without any authorization or notification of the higher authority. The original register was also found later by the same nurse. Both the registers were placed before the Appeal Panel. Register marked 'B' is reported to be the original register. The register marked 'C' is the duplicate register. The perusal of the original register, marked 'B', for the treatment period shows that Soframycin was applied to the athlete on the 2nd and 3rd June, 2010. Clostagen Cream was applied to the athlete in place of Soframycin Cream on the 4th, 5th and 7th June, 2010.

Dr. Karanjeet Singh has testified that practically whole of the back of Manjeet Singh was abraded and superficially the upper layer of skin was lost. He prescribed Soframycin to the Athlete for the treatment of the abraded surface. He further testified that Clostagen Cream was applied on this area for 3 days i.e. 4th, 5th and 7th June, 2010.

Counsel for the respondent is unable to deny the registers and record maintained by medical staff at NIS, Patiala. However, it is contended that there is no evidence to show how much Clostagen was applied while treating the athlete/ appellant and it was duty and care to be exercised by the athlete/ appellant that no prohibited substance entered his body. Even, same was also recommended by the Senior Scientific Officer. We do not find merit in these circumstances.

Clostebol is available in India in the form of ointment meant for application on the skin for faster recovery of wounds and it is not likely to have been ingested or taken by injection by the athlete for strength of his muscle.

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Before analyzing the fault or negligence of the athlete it would be important to mention that it is a known fact that the NIS Patiala is a government institute which provides training to the athletes. It is also undisputed that the Doctors, physicians, coaches are appointed in the national sports institutes by the Sports Authority of India(SAI) and such institutes functions under the aegis of SAI. It would also not be out of place to mention that the medicines, supplements are also provided in such institutes by the SAI and are presumed to be free from any prohibited substances.

No Fault or Negligence

Once the Panel accepts that Appellant has met his burden of proving how the Prohibited Substance entered his system, the question of his level of fault or negligence needs to be determined.

Evidence on records shows that Clostagen was applied on the back of the athlete. The Clostebol entered his body by application of the cream on the abraded surface. It is also verified from the records made available by NIS, Patiala that Clostagen Cream (contained Clostebol) was procured and made available for the treatment by this Institute.

It is also undisputed that Dr. Karanjeet Singh specializes in sports medicine and the nursing staff work under the guidance of Dr. Karanjeet Singh at NIS Patiala. Since Dr. Karanjeet Singh, is knowledgeable in the Prohibited Substances and the athletes being trained at the SAI camp at NIS, Patiala are led to expect and have every reason to believe a prescription from a NIS doctor or the nursing staff at NIS Patiala will not result in the delivery of a medication containing a Prohibited Substance. Thus was exercising utmost caution consulting Dr. Karanjeet with respect to his injuries and taking the treatment from the nursing staff, working under the guidance of Dr. Karanjeet at NIS Patiala itself.

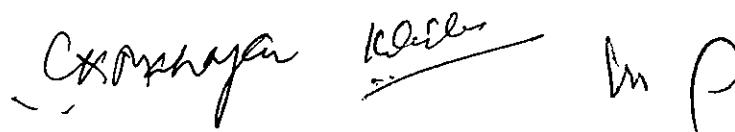
It is also an undisputed fact that the cream/ointment was applied on the back of the athlete by the nurse at NIS, Patiala and apparently the athlete/ appellant had had all reasons to believe that he was prescribed Soframycin and his nursing staff would apply only soframycin to him. He had further reason to believe that the nursing staff would not apply any other medicine on his injuries without consulting Dr. Karanjeet Singh

The question then is whether the Athlete, as a matter of utmost caution, had a duty to investigate the actual medication that he had received to ascertain whether it was indeed the medication prescribed by the NIS doctor. In the view of this Panel it would have been normal for the athlete to rely on the trustworthiness and knowledge of the NIS Doctor and his nursing staff. However, things would have been different if the athlete would have been treated by any other doctor outside NIS Patiala or he would have procured the medicines himself. Since, the athlete / appellant was being treated by doctor and nursing staff at NIS, Patiala, by a specialist in sports medicine he had absolutely no occasion or reason to suspect that an anti-septic cream containing a banned substance would be applied to his wounds. Further it is clear that cream/ointment applied to him was also not handed over to him and his wounds were directly dressed by the nursing staff leaving no opportunity to the athlete to see the medicine.

Thus, the Panel, in the aforementioned circumstances, is of the view that the burden on the athlete to exercise utmost caution is duly discharged and thus the athlete cannot be said to be negligent or guilty.

The following factors weigh in the Appellant's favor:

1. Appellant was at a camp sanctioned and working under the aegis of SAI, where as an athlete, he had every expectation that his visit to the NIS doctor, a specialist on medicines/Prohibited Substances, supplied and sanctioned by the SAI, which resulted in a prescription filled by NIS doctor, again supplied and sanctioned by the NIS, Patiala, would be the safest possible way for him to obtain medical treatment for his condition.
2. The reason for use of the substance was clearly medical.
3. A mistake in the application of the medication was made not by appellant/athlete or anyone working for him, but rather by the NIS, Patiala nurses. The evidence shows that the use of



Clostagen was a mistake not caused by the athlete's actions or those of any people within his control or sphere of influence.

The athlete/ appellants cannot be faulted at all for doping offence in these circumstances.

The attention of this Panel also was invited to a case where Clostebol was applied to unbroken surface of penis resulted in securing of 22 ng/dl testing. In these circumstances, the detection of 34ng/dl in the Appellant cannot be considered high as a result of the treatment given to the athlete/appellant. This level of 34 ng detected in the sample of the athlete/ appellants cannot be considered high or improper results of the treatment given to the athlete/ appellants.

The finding of Disciplinary Panel that the application of Clostagen cannot lead to such high quantity of the banned substance in the bodily specimens of the athlete/ appellants is erroneous and more so it is established on record that the said cream was applied by the medical staff at NIS, Patiala without knowledge of the athlete/ appellants and contrary to the treatment.

The research commissioned by the WADA accredited lab recorded the presence 22ng/ml consequent to single application of Clostebol whereas in the present case, the athlete/ appellants was treated over 3 days and over a large area in the body and on abraded surface, thus, 30 ng/ml concentration is of no consequence.

The Panel is of the opinion that negligence or fault lies on the part of the medical centre at NIS, Patiala and not with the athlete/ appellants. The Panel is also of the view that since the registers were in the custody of the nursing staff of the medical centre of NIS, Patiala it is only they who are responsible for tampering, fabrication and manipulation of the registers and for preparation of the duplicate registers. On the perusal of entries in regard to Manjeet Singh treatment and medicines recorded in the original registers, we find that Clostagen was administered to the athlete/ appellants without his knowledge and contrary to the treatment prescribed. Appeal Panel is appalled by the fact that a premier National Institute of Sports itself supplies medicines containing prohibited substance over the counter for the treatment of its athletes. This clearly shows negligence on the part of the NIS, Patiala.

The Panel is mindful that the NADA Rules, by establishing the possibility for a competitor to establish exceptional circumstances, has opened the door for athletes to demonstrate truly exceptional circumstances which justify the elimination/reduction of the period of ineligibility. The Panel is also of the view that there must be some opportunity in the course of the hearing process to consider the unique facts and circumstances of each particular case in imposing sanctions.

Taking into account these factors, the Panel believes that the present case is substantially different from the typical doping cases and qualifies as "exceptional". Appellant has established that he bears No Fault or Negligence, allowing for the total elimination of period of Ineligibility.

This Panel, thus, is of the view that the Disciplinary Panel is liable to set aside and the athlete/ appellants having made out a case that he was not responsible for the presence of the prohibited substance in his body. Due care and utmost caution was exercised by the athlete/ appellants. For the reasons aforesaid, the appeal filed by the athlete is allowed and the order of the Disciplinary Panel is set aside and the period of ineligibility imposed by the Disciplinary Panel stands completely eliminated.

Accordingly the appeal filed by WADA is dismissed. No order as to costs.


(JUSTICE C.K. MAHAJAN)

Chairman


(DR. K.D. TRIPATHI)

Member


(KHAJAN SINGH)

Member