

BEFORE THE ANTI DOPING APPEAL PANEL

J.L.N. Stadium, Lodhi Road, New Delhi -110 003

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Appeal No.- 29/ADAP/2023 & Cross Appeal No. 30/ADAP/2023

IN THE MATTER OF:

Ms. Seema Bisla APPELLANT

(Sport – Wrestling)

Vs

National Anti-Doping Agency RESPONDENT

AND

National Anti-Doping Agency APPELLANT

Vs

Ms. Seema Bisla RESPONDENT

Quorum: Mr. Nalin Kohli, Chairman, ADAP

Dr. PSM Chandran, Member

Ms. Indu Puri, Member

Present: Dr. Amaresh Kumar Advocate for the Appellant
Ms. Seema Bisla, Athlete
Ms. Manpreet Kaur Bhasin Advocate along with Mr. Yasir Arafat
Law Officer for NADA.

Date of Hearing: 16.02.2024

Date of Order: 08.04.2024

JUDGMENT

1. This is a case of cross-appeals whereby the Athlete Ms. Seema Bisla (Sport-Wrestling) and also NADA have separately challenged the order dated 21.07.2023 passed by the Anti-Doping Disciplinary Panel whereby an ineligibility period of one (1) year has been imposed upon the Athlete in Case No. 10/ADDP/2023 (“impugned order”).
2. The facts of the case, as available from the records, before the Anti-Doping Disciplinary Panel, are as follows:
 - i. To facilitate Out-of-Competition Testing, the National Anti-Doping Agency (NADA) is required to maintain a Registered Testing Pool (RTP). Athletes in NADA RTP have an obligation to make quarterly whereabouts submission which outline their regular activities and provide a 60-minute time slot each day when the Athlete will be available for Testing. If a RTP athlete fails to file their whereabouts information, or fails to keep the information up to date, or fails to be available during their identified 60-minute slot, they are at risk of committing a Whereabouts Failure under Article 2.4 of the Rules. Any combination of three (3) Whereabouts Failures within twelve (12) month period by a RTP athlete may result in an anti-doping rule violation (ADRV). For convenience Rule 2.4 is reproduced below as well as Article 10.3.2 under which the sanction is imposed.

Rule 2.4

Any combination of three (3) missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve (12) month period by an Athlete in a Registered Testing Pool.

Article 10.3.2

For violations of Article 2.4, the period of Ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete’s degree of Fault. The flexibility between two (2) years and one (1) year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a

serious suspicion that the Athlete was trying to avoid being available for Testing.

- ii. Ms. Seema Bisla (“the Athlete”) was included in NADA Registered Testing Pool (RTP) vide emails dated 20.07.2021, 28.02.2022 and 08.12.2022.
- iii. During the period between July 2022 and December 2022, NADA recorded three (3) Whereabouts Failure/Missed Test against the Athlete, which can be summarized as follows:

a) 1st Whereabouts Failure (Quarter July to September 2022) recorded on 14.12.2022.

On 06.07.2022, NADA issued an apparent Filing Failure letter to the Athlete, indicating that she was facing a potential Whereabouts Failure for failing to update her whereabouts information for the quarter of July to September 2022. The Athlete did not explain as to why her whereabouts information was not updated. NADA again issued a letter on 26.11.2022, wherein the Athlete was notified of her right to request an administrative review. Since no response was received from the Athlete, therefore, a first whereabouts filing failure was recorded on 14.12.2022.

b) 2nd Whereabouts Failure (Quarter October to December 2022) recorded on 29.12.2022.

On 21.10.2022, NADA issued an apparent Filing Failure letter to the Athlete, indicating that she was facing a potential Whereabouts Failure for failing to update her whereabouts information for the quarter of October to December 2022. On 29.12.2022, a notification of recording the 2nd whereabouts filing failure was issued to the Athlete. Consequently, a 2nd whereabouts filing failure was recorded on 29.12.2022.

The Athlete vide letter dated 06.01.2023 explained that she is an illiterate lady and not well conversant with Hindi and English. She further stated that she takes the assistance of her Coach Shri Kuldeep

for filing her whereabouts information. The Athlete also mentioned that her father was ill and under treatment for cancer, and therefore, non-filing of her whereabouts failures should not be considered as intentional.

From the record it is observed that the athlete's whereabouts information for the Quarter (October to December) was filled belatedly on 29.10.2022 and 16.12.2022.

c) 3rd Missed Test on 04 December 2022 recorded on 03.05.2023.

On 4th December 2022, NADA issued an apparent Missed Test letter to the Athlete, informing her that she was facing a potential Whereabouts Failure due to her unavailability and inaccessibility during her designated 60-minute time slot on December 4th, 2022. The Athlete was also notified of her right to request an administrative review. However, the Athlete did not exercise this right. As a result, on May 3rd, 2023, NADA recorded a 3rd Whereabouts Failure (Missed Test) against the Athlete.

It is important to note that on the same day as the recorded Missed Test, the Athlete provided her urine sample to NADA officials, which was subsequently tested and found to be negative.

- iv. Consequently, NADA issued a Notice of Charge dated 12.05.2023 for violation of Article 2.4 of the National Anti-Doping Rules, 2021 (“ADR”). The notice of charge imposed provisional suspension under Article 7.4.2 of the ADR with effect from the date of the Notice of Charge.
- v. By way of the impugned order, an ineligibility of one (1) year under Article 10.3.2 of ADR has been imposed upon the Athlete. Hence, these appeals.

3. We have heard both the parties at length. The Appellant has submitted that the Athlete, is illiterate and hails from a very poor and humble background. The Appellant argues that it is the duty of NADA to educate the

Athlete about anti-doping measures and procedures. Additionally, the Appellant has appealed on compassionate grounds concerning the health condition and eventual demise of the Athlete's father. The Appellant has further submitted that the whereabouts information for the quarter of October to December was filed by the Athlete. The Appellant has further submitted that the missed test on 04.12.2022 should not be considered because the Athlete was duly tested on the same day and more importantly her sample had returned negative. Therefore, the missed test should not be recorded and it should not be a case of violation of Article 2.4 of ADR of 2021.

4. On the other hand, Ms. Manpreet, Advocate on behalf of NADA, has submitted that the First Whereabouts failure for the quarter of July to September 2022 is not disputed by the Athlete. Regarding the Second Whereabouts failure, it is evident that whereabouts information was not filed on time as required under Article 4.8.8.2 of ISTI. *“Article 4.8.8.2 states that the Anti-Doping Organization collecting an Athlete’s Whereabouts Filings may specify a date prior to the first day of each quarter (i.e., 1 January, 1 April, 1 July and 1 October, respectively)”*. The Athlete had specified the time slot between 10:00 AM to 11:00 AM for the day of 4th December 2022 at Pramjeet Sports Academy, Gurgaon. Since the Athlete was not available for testing therefore, an “Unsuccessful Mission Report” was prepared and a Missed Test was recorded. The athlete’s justification for giving the sample on that day does not mean that her missed test should not be recorded. The counsel has drawn attention to Article 4.8.8.5 (c) of ISTI

“If an Athlete is not available for Testing during their specified 60-minute time slot at the location specified for that time slot for that day, they will be liable for a Missed Test even if they are located later that day and a Sample is successfully collected from them”.

5. NADA has further argued that the Athlete has committed three whereabouts failures within a period of twelve months, which constitutes a violation of Article 2.4 of the Anti-Doping Rules (ADR). As per Article 10.3.2 of the ADR of 2021, this violation warrants a period of ineligibility of two years. The Athlete's failure to provide accurate and timely whereabouts information amounts to a serious breach of her responsibility as a professional athlete to comply with the anti-doping regulations.

Analysis & Finding

6. The core issue before this panel pertains to the determination of whether the Athlete's unsuccessful attempt to undergo testing during the designated 60-minute time slot of 10:00 AM to 11:00 AM on 04.12.2022, at Pramjeet Sports Academy, Gurgaon should be considered a missed test, in light of fact that the Athlete did provide a sample on the same day which tested negative. If the panel finds that the attempt should be recorded as a missed test, then the next step is to determine the appropriate sanction, including its duration and any potential reduction.

7. A perusal of the records and text reading of WADA ISRM & ISTI, reveals that the Athlete's argument is contrary to the provision of Article 4.8.8.5 (c) of ISTI of WADA. The Panel would like to reproduce the relevant Article 4.8.8.5 (c) of ISTI

“If an Athlete is not available for Testing during their specified 60-minute time slot at the location specified for that time slot for that day, they will be liable for a Missed Test even if they are located later that day and a Sample is successfully collected from them”.

In light of this Article, this Panel is of the view that the Athlete has violated Article 2.4 of the ADR and as per Article 10.3.2 of ADR, the sanction for a violation of Article 2.4 shall be two (2) years subject to a minimum one year based on the degree of fault.

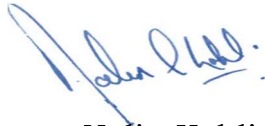
8. Therefore, in the given facts and circumstances of the present case, it is important to highlight that the Athlete was subjected to a subsequent test on the same day, and the result of the test was negative. Considering this, it is imperative to remember that the Rules are primarily designed to prevent doping from occurring. We find that the Athlete has a lower degree of fault. However, we did not find any Court of Arbitration for Sports (CAS) ruling concerning a violation of Article 2.4 in which the sanction period imposed was below one year. The Panel believes that the ADDP has rightly applied the minimum period of ineligibility of one year.

9. We hold that the appellant Ms. Seema Bisla is sanctioned with a period of one (1) year ineligibility commencing from 12.05.2023. Therefore, the appeal by the Athlete and the cross-appeal filed by NADA stands dismissed.

The matter is disposed of accordingly.



Indu Puri
Member



Nalin Kohli
Chairman



Dr. PSM Chandran
Member