

BEFORE THE ANTI-DOPING DISCIPLINARY PANEL

In the matter of Ms. Sukhpreet Kaur (Sports-Aquatics) for violation of Articles 2.1 and 2.2 of National Anti-Doping Rules, 2021.

(PROCEEDINGS CONDUCTED THROUGH VIRTUAL MODE)

Quorum: Mr. Chaitanya Mahajan, Chairperson, ADDP

Dr. Rajendra Arya, Member

Miss. K.M. Beenamole, Member

Present: Mr. Yasir Arafat, NADA

Ms. Sukhpreet Kaur, Athlete

JUDGEMENT

14.02.2024

1. The present proceedings before this Anti-Doping Disciplinary Panel (“this Panel”) emanate from the Adverse Analytical Finding (“AAF”) against Ms. Sukhpreet Kaur who is an “Aquatics Water Polo Player” and her date of birth as stated by her in the Dope Control Form (“DCF”), happens to be 20.04.1991.
2. **Brief facts of the case are as follows:**
 - 2.1 That on 25.06.2023, NADA Doping Control Officer (“DCO”) during the 76th Sr. National Aquatic Championship 2023 at Bengaluru collected an out-of-competition (OOC) urine sample from the Athlete. The sample was splits into two parts marked ‘A’ & ‘B’ with a unique reference code of 6503562. The samples were then sent for testing in the National Dope Testing Laboratory (NDTL), Delhi, India. NADA.
 - 2.2 That A sample bearing code no. 6503562 of the Athlete was tested at NDTL Delhi in accordance with the procedure set out in WADA’s International Standards for Laboratories and was returned with an Adverse Analytical Finding (“AAF”) for S4

Hormone and Metabolic Modulators Clomifene. The said Substance is hormone and metabolic modulators and is listed under S4 of WADA's 2023 Prohibited List which is a specified substance.

- 2.3** The Initial review of A samples as per Article 7.2 of NADA and Article 5.1.1 of International Standards for Result Management (ISRM) shows that the Athlete did not have Therapeutic Use Exemption (TUE); there was no apparent departure from the International Standard for Testing and Investigations ('ISTI') or the International Standard for Laboratories ('ISL') that could undermine the validity of the AAF; and the AAF had not been caused by ingestion of the relevant Prohibited Substance through a permitted route.
 - 2.4** The First Notification was issued by NADA on 24.07.2023, wherein she was notified that she had been charged for violation of Rule Articles 2.1 & 2.2 of ADR. In the aforesaid letter, the Athlete was also informed of her right to have her B sample specimen tested and the right to an impartial hearing by the Independent Anti-Doping Disciplinary Panel to which "Ms. Sukhpreet Singh" waived off her right to have the B Sample analysis at NDTL as well as did not accept her Provisional Suspension.
 - 2.5** The Notice of Charge under the National Anti-Doping Rules, 2021 was issued to the Athlete on 01.08.2023. In response to the Notice of Charge, the athlete has filed a written submission dated 07.08.2023 on record for the consideration of this Panel.
 - 2.6** The virtual hearing was held on 01.12.2023 by the Hearing Panel constituted under Rules. The hearing was attended by Mr. Yasir Arafat for NADA and the Athlete attended the hearing through online mode.
- 3.** Submissions made by the Athlete are reproduced herein:
- 3.1** The athlete in their submission on 11.09.2023 elaborately apprised the Disciplinary Panel about the stature of the athlete. The Athlete has denied the charges and has stated that she has not consumed any prohibited substances.
 - 3.2** It is pleaded by the Athlete that she got married on 16.02.2020 and was unable to conceive. In order to increase her chances of conceiving, she consulted Dr. Seema Rani at CGHS Dispensary Dwarka Sec 23, New Delhi. The doctor prescribed her

medications including "Fertomid 50mg and Folic Acid 5 mg (Folvite-5mg)" to help in conceiving. The Athlete has further stated that she consumed the said medications based on the doctor's advice. The prescription was subsequently placed for consideration by the Panel.

4. Submissions made by NADA are reproduced herein:

- 4.1** It is submitted by NADA that under Article 2.1.1 of the Rules, it is the personal duty of each Athlete to ensure that no Prohibited Substance enters his/her body. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the part of the Athlete is to be demonstrated so as to establish a case of anti-doping rule violation under Articles 2.1 & 2.2 of the Rules.
- 4.2** It is further submitted the Athlete has not disclosed the said medication on his doping control form at the time of sample collection nor did he apply for or furnish a Therapeutic Use Certificate ('TUE') in respect of his medical condition.
- 4.3** It is further submitted that the onus is on the Athlete to ensure that she does not carelessly ingest medication and reliance on a doctor can not absolve athletes of their responsibilities.
- 4.4** It is further submitted that the Athlete has committed ADRV and the relevant period of ineligibility under Article 10.2.2 of the Rule is to be imposed upon the Athlete.

5. Finding of the Panel:

- 5.1** After the perusal of the submissions of both parties, the panel is of the view that as per Article 2.1 of the Anti-Doping Rules 2021, it is the personal duty of every athlete to ensure that no prohibited substance, as defined, enters his or her body. Reference may also be made to Article 2.1.2 which provides that the presence of a prohibited substance or its metabolites is sufficient proof of anti-doping rule violation where Sample A returns an adverse finding.
- 5.2** It is undisputed that the Athlete's Sample has tested positive for Hormone and Metabolic Modulators Clomifene being a specified substance and is listed as

Hormone and Metabolic Modulators as per Category S4 of the WADA's 2023 Prohibited List.

- 5.3** Where a sample testing returns a positive finding, the onus is on the athlete to explain how the substance entered his/her body. Fault, negligence, or knowing use are not relevant considerations that need to be proved while making a case for anti-doping violation. The liability cast on the athlete is thus strict.
- 5.4** The explanation offered by the Athlete has established the source of the prohibited substance but she has failed to establish that she bears no significant fault/negligence.
- 5.5** The Hearing Panel is of the opinion that the Athlete has failed to exercise the due diligence required before consuming any substance and not getting the same verified or checked through the most basic channels, namely her doctor or a simple internet search, which would have revealed that the substance was prohibited by WADA. However, the Rules impose a positive duty on an athlete to ensure that she does not violate the doping rules and the said duty cannot be simply avoided or delegated away by laying the blame on the doctor.
- 5.6** This has been held by the Court of Arbitration that the failure of a doctor does not exempt the athlete from personal responsibility and this Panel is bound by the same.
- 5.7** In CAS 2020/A/7536 - where it was held that the Athlete has to be careful before taking medicine on the advice of the doctor and 2016/A/4609 AND CAS 2017/A/1539 - where it was held that the Athlete cannot transfer his/her responsibility on the doctor, she has to be vigilant while taking medicine.
- 5.8** In view of the above, it is established that a violation under Article 2.1 of the Anti-Doping Rules has taken place. Once a violation of anti-doping rules has been established, Sanctions on Individuals as provided under Article 10 of the Anti-Doping Rules 2021 must ensue. The present case involves a specified substance, hence the Athlete is liable for sanctions under Article 10.2, an ineligibility for 2 years.

5.9 The Panel held that the athlete has violated Articles 2.1 & 2.2 of the ADR, 2021, she is hereby sanctioned with an ineligibility of two (2) years as per Article 10.2.2 of ADR, 2021 beginning from the date of decision i.e., 14.02.2024.

5.10 The Panel directs that in accordance with Article 10.10 all the competitive results obtained by the athlete from the date of sample collection 25.06.2023 shall stand disqualified with all resulting consequences including forfeiture of medals, points, and prizes.



Mr. Chaitanya Mahajan
(Chairman)



Dr. Rajendra Arya
(Medical Member)



Ms. K . M. Beenamole
(Sports Member)