

Anti-Doping Disciplinary Panel

J.L.N Stadium, Gate No. 10, Near Staircase No. 5, Ground Floor
Lodhi Road, New Delhi 110 003

To,

Date: 10.01.2024

Mr. Mohsin Gulab Ali
R/o H.No. 126, Bichpatiya,
Ghonda, North East, Delhi-110053
Email: - mohsingulabjudoka742@gmail.com

Subj: Decision of the Anti Doping Disciplinary Panel Case No.-141/ADDP/2023

NADA Vs. Mr. Mohsin Gulab Ali (ADAM ID: -ALMOMA76390)

The order containing the decision of the Anti-Doping Disciplinary Panel dated 10.01.2024 in respect of final hearing of the above case held on 24.11.2023 is enclosed.

Please note that according to Article 13.2.2 of Anti-Doping Rules of NADA 2021, **the time to file an appeal to the National Anti-Doping Appeal Panel shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.** The appeal may be filed at the abovementioned address.

Also please note that according of Article 10.7.1- (**Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations**)- Any period of Ineligibility imposed may be partially suspended if you assist NADA in uncovering and/or establishing an ADRV by another Athlete or Athlete Support Personnel pursuant to Article 10.7.1 ADR. Further, the athlete is subjected to doping control test during the ineligibility period, therefore, athlete is required to update his residential address as and when changed.

Copy of the NADA Anti Doping Rules 2021 may be downloaded from NADA website at the following link:- [Downloadable Resources – NADA India \(yas.gov.in\)](https://www.yas.gov.in/)

The receipt of this communication may be acknowledged.

Encl: 04 sheets.



(Yasir Arafat)

Copy forwarded together with the copy of the order containing the decision of the Anti-Doping Disciplinary Panel for information and action deemed necessary:

1. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700) P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. General Secretary, Judo Federation of India, WZ-114/E, 3rd Floor, Hari Singh Complex, Todapur, Main Road, New Delhi – 110002.
3. International Judo Federation, 1007, Avenue, Lausanne, Switzerland.
4. National Anti-Doping Agency, J.L.N Stadium, 1st Floor, Hall No. 104, Lodhi Road, New Delhi, 110003.

BEFORE THE ANTI-DOPING DISCIPLINARY PANEL

In the matter of **Mr. Mohsin** Gulab Ali for violation of Articles 2.1 and 2.2 of National Anti-Doping Agency Anti-Doping Rules, 2021.

Quorum: Mr. Chaitanya Mahajan, Chairman, ADDP

Dr. D.S Arya, Medical Member, ADDP

Ms. Archana Shinde, Sports Member, ADDP

Present: Ms. Manpreet Kaur Bhasin along with Mr. Yasir Arafat for NADA

Mr. Mohsin Gulab, Athlete

Mr. Mehmood Pracha, Counsel for Athlete

JUDGEMENT

10.01.2024

1. The present proceedings before this Anti-Doping Disciplinary Panel (“this Panel”) emanate from the Adverse Analytical Finding (“AAF”) against Mr. Mohsin Gulab (“the athlete”). This athlete is a “Juduka” and her date of birth as stated by him in the Dope Control Form (“DCF”), happens to be 01.07.1998.
2. That the brief facts of the case are as follows:
 - 2.1 On 27.05.2023, a NADA Doping Control Officer (“DCO” collected out-of-competition (OOC) urine sample from the Athlete at Bhopal, Madhya Pradesh with samples split into two parts. The ‘A’ sample and the ‘B’ sample were marked with a unique reference code of 6492182. The samples were then sent for testing in the National Dope Testing Laboratory (NDTL), Delhi, India.
 - 2.2 That A sample bearing code no. 6492182 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”). The first sample bearing code 6492182 revealed the presence of S1.2 Other Anabolic Agents/SARMS enobosarm (ostarine).
 - 2.3 The said Substance is an Andarine which is an Anabolic Agent and is listed under S 1.2 of WADA’s 2023 Prohibited List as a non-specified substance.

- 2.4** 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 there was no apparent deviation from the International Standard for Testing and Investigation (“ISTL”) or the International Standard for Laboratories (“ISL”) that could undermine the validity of the AAF.
- 2.5** That on 20.06.2023; the result of Sample-A was informed to the Athlete who reported an Adverse Analytical Finding [AAF] i.e., SARMS enabosarm (ostarine) which is a prohibited substance failing under the Class “S1.2 Other Anabolic Agents”.
- 2.6** On 23.06.2023, the Athlete requested to get Sample B tested and Sample B was sent for the laboratory examination at the National Dope Testing Laboratory, Delhi.
- 2.7** The athlete was a notification dated 11.07.2023 for adverse analytical findings in sample no. 6492182 and sample confirmed the Adverse Analytical Finding on 10.07.2023 whereby the Athlete was informed about the AAF in her sample reports. The athlete received a notice of charge dated 11.07.2023. The athlete received a notice of charge dated 11.07.2023 after the analysis of the B sample as requested by the athlete. The said analysis also highlighted the violation of Article 2.1 and Article 2.2 of the NADA Anti-Doping Rule, 2021, and the presence of S1.2 Other anabolic agents/SARMS S4 (andarine) and 15 days was granted to dispute the findings resulting in ADRV.
- 2.8** The Disciplinary Panel was constituted and on 21.09.2023, the learned counsel for the athlete sought more time to file the requisite application to seek the necessary record for the case. The direction issued vide the Disciplinary Panel’s interim order dated 21.09.2023:

The panel hereby directs the following:

1. Submissions heard.

2. The learned counsel for the athlete seeks some time to file the requisite application to seek the necessary records for the adjudication of the present case.

- 2.9** An application was filed by the Counsel of the Athlete and NADA was directed to file the reply to the Application in the next 3-5 days. The Counsel of the athlete was granted liberty to file a rejoinder to the reply filed by NADA. The directions issued vide order dated 21.09.2023 are reproduced herein:

The panel hereby directs the following:

1. Submissions heard.

2. The learned Representative of NADA is directed to file the reply to the Application filed by the counsel for the athlete in the next 3 to 5 days.

3. The Counsel for the athlete is granted the liberty to file a rejoinder to the reply filed by NADA after 3 days of the filing of the reply.

2.10 The Panel disposed of the application dated 18.09.2023 filed by the Counsel for the Athlete seeking the following:

- a. NADA to initiate an investigation and call for witnesses and documents to help the athlete make his case and
- b. Provide a copy of the lab report indicating the quantity of the banned substance detected in the sample of the Athlete.
- c. Providing a copy of the proceeding held on 18.09.2023.

NADA submitted its reply to the application on 25.09.2023. The Panel was of the view that it is the athlete who has the onus to prove his innocence and the panel is not empowered to conduct such roving inquiry on behalf of the demised athlete. The Counsel of the Athlete submitted that there is a criminal report with regard to the alleged sabotage and the same is perused in the courts of law. The Panel disposed of the said application with a direction to NADA to supply a copy of the NDTL report along with the proceeding held on 18.09.2023.

The relevant part of the Order dated 26.10.2023 is reproduced herein:

5. After hearing the arguments advanced by both sides, the Panel is of the view that it is the athlete who has the onus to prove his innocence, and the panel is not empowered to conduct such a roving inquiry on behalf of the demised athlete. Moreover, there has been a submission on behalf of the Counsel for the athlete that a criminal report with regard to the alleged sabotage has been filed and the same is being perused in the Courts of Law. Since the athlete is already availing the efficacious remedy available to him and the Panel since not being empowered to address the Athletes' prayers in entirety, dispose of the said application with a direction to NADA to supply a copy of the NDTL report along with the proceedings held on 18.09.2023.

3. Submissions made by the counsel and the Athlete are reproduced herein:

3.1 The Counsel for the athlete in their submission on 27.07.2023 elaborately apprised the Disciplinary Panel about the stature of the athlete. The Counsel of the Athlete submitted that the Athlete represented India in 2013 and the Athlete has a clear

record from the past. The Athlete has undergone several dope tests and has on every account been found negative. Therefore, there was no case of anti-doping violation earlier.

- 3.2 The Counsel for the athlete submitted that the Athlete has appeared in various state tournaments wherein he is a recipient of many awards. Some of his achievements include a bronze medal at the Asian Cup U21 Macau in 2018, one of the top junior judo events, and a bronze medal at the Asian Open in Kuwait in 2023.
- 3.3 The Counsel of the athlete submitted that the initiation of the present proceedings is a result of the well-hatched conspiracy at the behest of Mr. Yashpal Solanki and his associates in injecting the prohibited substance into the Athlete. It was submitted by Counsel for the athlete that apart from the food/drinks that were being supplied in the Mess at Bhopal; no other food/drinks or medicines whatsoever were consumed by Mr. Mohsin.
- 3.4 That it was submitted that the presence of the prohibited substances is interlinked with the conspiracy that has been hatched by Mr. Yeshpal Solanki. The Athlete after coming to know regarding the presence of prohibited substances had substantially recollected the entire sequence of events of the corresponding days before testing and had come to the inescapable conclusion that the presence of the prohibited substance might have been un-intentionally consumed by way of tea which was served at the Hostel in the morning which is a part of the larger conspiracy at the behest Mr. Yashpal Solanki.
- 3.5 Counsel for the athlete submitted that there was a personal vendetta of Yeshpal Solanki to promote Vijay Yadav. Vijay Yadav was defeated by the athlete in several selections. Even after being defeated, either the upcoming event was changed or new trials were set up for Mr. Solanki.

4. Result of the sample:

- 4.1 The sample reports bearing sample Number 6492182 revealed the presence of Other Anabolic Agen/ SARMS enobosarm (ostarine) and other Anabolic agents in accordance with TL-12. The Second sample bearing code no. 6492182 revealed the presence of S1.2 Other Anabolic Agents/ SARMS enobosarm (ostarine).

5. Observation of the Panel:

- 5.1 We have heard the argument advanced by both parties and have perused the available material on record. Considering the submissions made on behalf of the parties and the judgments relied upon, the panel observed and opined the following:
- 5.2 The Panel decided about an application filed by the Counsel for the athlete on 18.09.2023 seeking the following:
- a. NADA inviting an investigation and call for witnesses and documents in order to help the athlete make out his case and
 - b. Provide a copy of the lab report indicating the quantity of the banned substance detected in the sample of the Athlete.
 - c. providing a copy of the proceedings held on 18.09.2023.
- 5.3 During the argument the counsel of the athlete submitted the substance found in the athlete's urine samples was the outcome of an act of active sabotage during the athlete's stay at the camp organized by the Sports Authority of India at the National Centre of Excellence, Bhopal, between 21.05.2023 to 27.05.2023.
- 5.4 The counsel of the Athlete submitted that to make out the case of active sabotage by certain persons and to bring the case within the ambit of the provisions of Article 10.5 of the National Anti-Doping Rules, 2021 the athlete requires the NDTL report for the concentration of prohibited substance in his samples along with the CCTV Footage of National Centre of Excellence, Bhopal, between 21.05.2023 to 27.05.2023 and the call detail records of certain individuals involved in the alleged sabotage. Hence, the panel is of the view that it is the athlete who has the onus to prove his innocence, and the panel is not empowered to conduct such a roving enquiry on behalf of the demised athlete.
- 5.5 The Representative of NADA refuting the argument by the athlete's counsel submitted that ADDP must ascertain whether there has been an ADRV and the onus is on the athlete to prove whether the said ADRV was unintentional or an act of sabotage. The relief sought is beyond the scope and ambit of ADDP. Reliance was placed on **Arbitration CAS 2018/A/6007 Jibril Rajoub v. Federation Internationale de Football Association (FIFA) award of 18.07.2019** wherein it was held that the disciplinary committee does not possess the judicial power to require persons to testify. The Panel held that this panel is not empowered to conduct such an enquiry.

5.6 The Counsel of the Athlete also submitted that the criminal report with regards to the alleged sabotage has been filed and the same is being perused in the courts of law. Since the athlete is already availing the efficacious remedy available to him and the panel is not empowered to the Athlete's prayer entirely.

6. Finding of the Panel:

6.1. After the perusal of the submission of both the parties, relied upon judgment by the athlete's counsels and the referred judgments of the panel, the panel is of the view that the Athlete has committed an anti-doping rule violation.

6.2 The panel notes that the burden of proof with respect to intent lies with the Athlete, who shall discharge the burden on a balance of probabilities that he did not know that his conduct might result in anti-doping rule violation and did not manifestly disregard that risk. Therefore, it is difficult to hold that the anti-doping rule violation was not intentional on the part of the athlete. The Athlete has failed to establish any grounds for elimination or reduction of the period of ineligibility.

6.3 In view of the totality of circumstances, the athlete has failed to establish how the prohibited substance entered into his system and his explanation was speculative and insufficient to satisfy the hearing panel.

6.4 The Panel concluded that the said ADRV was unintentional due to the following reasons:

6.5 The athlete did not prove that it was a case of active sabotage by certain persons,

6.7 The athlete is already availing the efficacious remedy available to him and the Panel.

6.6 In the view of the facts, circumstances, precedents, and Rules mentioned above, it is held that the athlete has violated Articles 2.1 & 2.2 of the NADA ADR, 2021, **He is hereby sanctioned with an ineligibility of 4 years as per Article 10.2.1.1 of the NADA ADR, 2021 beginning from the date of provisional suspension i.e., 20.06.2023.** It shall be noted that the athlete **has failed to satisfy the panel that the ADRV was non-intentional as per Article 10.2.1.1 of the NADA ADR,2021.**

6.5 The Panel directs that in accordance with Article 10.10 all the competitive results obtained by the athlete from the date of sample collection 27.05.2023 shall stand disqualified with all resulting consequences including forfeiture of medals, points, and prizes.

The case is disposed of accordingly.



Mr. Chaitanya Mahajan
(Chairman)



Dr. D.S Arya
(Medical Member)



Ms. Archana Shinde
(Sports Member)