

Anti-Doping Disciplinary Panel

J.L.N Stadium, Gate No. 10 Hall No.103
1st Floor, Lodhi Road, New Delhi 110 003
Telefax : 011-24368274

To,

Date: 07.07.2023

Ms. Radha Chaudhary
R/o S-251/67, Majid Manav
Amichand Khand Giri Nagar,
Kalkaji New Delhi -110019
Email: radhachaudhary9560@gmail.com

Subj: Decision of the Anti-Doping Disciplinary Panel Case No.- 106.ADDP.04.2023

NADA Vs. RADHA CHAUDHARY (ADAMS ID – CHRAFA54274)

The order containing the decision of the Anti-Doping Disciplinary Panel dated 07.07.2023 in respect of final hearing of the above case held on 24.05.2023 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: www.nadaindia.org/en/anti-doping-rule-of-nada

The receipt of this communication may be acknowledged.

Encl: 07 sheets.


(Yasir Arafat)

Copy to:

1. World Anti-Doping Agency, Stock Exchange Tower, 800 Place Victoria (Suit 1700)
P. O. Box 180, Montreal (Quebec), H4Z 1B7, Canada.
2. Secretary General, Athletics Federation of India, A-90 Naraina Industrial Area Phase-I Opp-
Near PVR Cinema, Industrial Area Phase I, Naraina, New Delhi, Delhi 110028.
3. International Association of Athletics Federation ,17, Rue Princesse FLOrestine BP 359,
MC 98007, Monaco
4. National Anti-Doping Agency, J.L.N Stadium, Gate No. 10 Hall No.103 , Lodhi Road,
New Delhi 110003.

IN THE CHAMBER OF ANTI DOPING DISCIPLINARY PANEL

J.N. STADIUM COMPLEX, ENTRY GATE NO.10, STAIRCASE NO.3,
1ST FLOOR, HALL NO. 103-104, NEW DELHI – 110003, INDIA.

PH: 011-24368274, 24368249.

TELEFAX: 24368248, EMAIL: info.nada@nic.in

IN THE MATTER OF:-

NADA

.....Authority

**Through Yasir
Arafat, Law Officer**

VS.

Radha Chaudhary

.....Athlete

In-Person

ORDER

- (1) This order shall dispose the proceedings initiated pursuant to the Notice of Charge (NOC) dated 03/15.02.2023 issued by NADA to the Athlete (Ms. Radha Chaudhary) for violation of Rule 2.1 and 2.2 of the NADA Anti -Doping Rules, 2021 ("Rule") after her sample collected on 17.12.2022 out of competition in Bangalore, Karnataka by the Doping Control Officer of NADA returned analytical finding forHormone and Metabolic Modulators/Clomifene which are under the S-4 category of WADA's Prohibited List 2022.
- (2) NADA notified its assertion relating to violation of Anti-Doping Rule 2.1 by **Ms. Radha Chaudhary (Athlete)**.

Yasir Chaudhary

J. Arafat

(3) Mr. Yasir Arafat Law Officer, NADA presented the case on behalf of NADA and produced the documents in support of the case. The Athlete appeared in person to present her case. Hearing was conducted on 24.05.2023 by the Panel through online mode.

(4) **Factual Background:**

- (a) A urine sample ("Sample") of the athlete, Radha Chaudhary ("**Athlete**") was collected on 17.12.2022 out-of-competition by the Doping Control Officer of NADA in Bangalore, Karnataka. As per procedure, the Sample was split into two separate bottles, hereinafter referred to as Sample A and Sample B.
- (b) Sample A was tested at the National Dope Testing Laboratory, New Delhi and was returned with an Adverse Analytical Finding (AAF) for Hormone and Metabolic Modulators/Clomifene which are under S-4 category of WADA's Prohibited List 2022.
- (c) Consequently, NADA issued a notice of charge dated 03/15.02.2023 ("Notice of Charge") for violation of Rule 2.1 and 2.2 of the NADA Anti -Doping Rules, 2021 ("Rule"). The Athlete has accepted the provisional suspension vide letter dated 10.02.2023 and waived her right to get Sample B tested.
- (d) The Athlete after receiving the Notice of Charge submitted her medical papers/documents dated 21.09.2022, 06.10.2022 and 08.10.2022 issued by Matrachaya - Mother and Child Care Centre, Bulandshar, U.P. to show that she consumed some medicine on medical advice as she was facing problem in conceiving the child and she denied the charges of consuming any prohibited substance intentionally to gain any unfair advantage.

Radha Chaudhary

J.P.H.

- (e) The NADA has also filed detailed reply/response on 06.06.2023, wherein it is submitted that 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 Article 2.1.
- (f) The test result of the urine sample of the Athlete clearly shows the presence of the prohibited substance. The Athlete in the Doping Control Form (DCF) has nowhere declared that she was under some medication for conceiving the child. The defence taken by the Athlete after she was served with notice of charge, is an afterthought just to escape the liability under the Anti-Doping Rules.

6. Submissions of the Athlete

The oral submissions made by the Athlete before the Hearing Panel are stated in brief as below:-

- (a) The Athlete participates in the Athletics sports events competition and belongs to a humble family and has no intention or motive to consume prohibited substance to enhance her endurance or strength to achieve the desired/best result.
- (b) The Athlete has not consumed any food product, medicine, or supplement in oral or injection form which might have any component of prohibited substance which has been found in her body.
- (c) The Athlete pleaded that she was under pressure from her in-laws to conceive the child and to increase her chances of conceiving

Jyoti Choudhary

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she consulted the doctor at - Matrachaya – Mother and Child Care Centre, Bulandshar, U.P. who gave her some medicines to help in conceiving.

7. Submissions of NADA

(a) 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.

(b) It is further submitted by NADA that the test result of the urine sample of the Athlete clearly shows the presence of the prohibited substance. The stand of taking medicines for conceiving child is an afterthought just to escape the liability under the Anti-Doping Rules.

(c) The Athlete has not disclosed in the DCF that she was under some medication and has only disclosed about consuming the food supplements.

8. Observations and Findings of the Panel

After hearing the parties at length and having considered all documents and the written and oral submissions, the Panel observes and holds as under:

- (i) 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 presence of a prohibited substance or its metabolites is sufficient proof of anti-doping rule violation where the Sample A returns an adverse finding and the athlete waives off the analysis of Sample B. In the present case, the Athlete has not requested

Arjun Choudhary

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for analysis of the Sample B and is thus deemed to have accepted the findings contained in Sample A.

- (ii) When a sample testing returns a positive finding, the burden is on the Athlete to explain and justify as how the prohibited substance has entered his/her body.
- (iii) The urine sample ("Sample") of the athlete collected on 17.12.2022 out-of-competition by the Doping Control Officer of NADA in Bangalore, Karnataka and tested at the National Dope Testing Laboratory, New Delhi returned with an Adverse Analytical Finding (AAF) for Hormone and Metabolic Modulators/Clomifene which are under S-4 category of WADA's Prohibited List 2022.
- (iv) The Athlete pleaded that she was under pressure from her in-laws to conceive the child and to increase her chances of conceiving she consulted the doctor at - Matrachaya – Mother and Child Care Centre, Bulandshar, U.P. who gave her some medicines to help in conceiving and she has not consumed any prohibited substance intentionally to gain undue advantage.
- (v) The Hearing Panel is of the opinion that the explanation given by the Athlete regarding consuming some medicines on medical advice to conceive child appears to be an afterthought to escape the liability under the Anti-Doping Rules as the Athlete has not declared in the Doping Control Form about consuming any medicines two months before the taking the sample. She has only declared about use of certain food supplements.
- (vi) Based on the reading of the medical documents, the Hearing Panel observes that the athlete was diagnosed by the doctor as a case of infertility without investigations (infertility profile) and medical

Arjun Choudhary

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examination. She diagnosed it only based on Ultrasound which is not sufficient to label her a case of infertility. She also prescribed her medication accordingly. This is not the proper the line of treatment in cases of infertility issues.

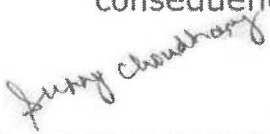
(vii) The Hearing Panel is of the opinion that the Athlete has failed to exercise the due diligence required before consuming any substance and not getting the same verified or checked through the most basic channels, namely her doctor or a simple internet search, which would have revealed that the substance 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. This has been held by the Court of Arbitration in *International Ski Federation vs Therese Jahaug & Norwegian Olympic and Paraolympic Committee ad Confederation of Sports (NIF)* - where the Court of Arbitration has noted that failure of a doctor does not exempt the athlete from personal responsibility and this Panel is bound by the same. 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 *CAS 2016/A/4609 AND CAS 2017/A/1539* - where it was held that the Athlete can not transfer his/her responsibility on the doctor. He has to be vigilant while taking medicine.

(viii) It is also pertinent to mention that the Athlete neither have a TUE certificate to justify the presence of prohibited substance nor the athlete disclose to the doctor that she is an athlete and please do not prescribe any medicines which are prohibited in the WADA's/NADAs.

Sunny Choudhary

J.P.H.

- (ix) Having said that, it is not entirely unbelievable that the Athlete may have been prescribed the said medication for purposes of treating her infertility. NADA has also not been able to disprove the medical evidence produced by the Athlete.
- (x) In view of the above discussion, it is established that a violation under Article 2.1 of the Anti-Doping Rules has taken place inasmuch as the Athlete's sample has returned an adverse finding on account of the medicine consumed by him, admittedly.
- (xi) 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 10.2.2, an ineligibility for a period of 2 years unless the NADA proves that the violation was intentional.
- (xii) In the present case, since the Athlete has not accepted provisional suspension, **the period of her ineligibility for the period of 2 years shall commence from the date of the present order i.e.; 04.07.2023.** We also direct that all other competitive results obtained by the athlete from the date of sample collection i.e., 17.12.2022 shall be disqualified with all resulting consequences including forfeiture of medals, points and prizes.


(SUNNY CHOUDHARY)
SINGH)

LEGAL MEMBER


(DR. S. SOODAN)

MEMBER


(JAGBIR)

MEMBER

Dated: 04.07.2023