SPORT RESOLUTIONS

SR/067/2025

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF WORLD ATHLETICS

Before:

Dr Anna Bordiugova (Chair)

BETWEEN:

World Athletics ***Anti-Doping Organisation***

and

Ms Madhuri Kale ***Respondent***

DECISION OF THE DISCIPLINARY AND APPEALS TRIBUNAL

I. INTRODUCTION

1. World Athletics ("**WA**" or "**ADO**") is the international federation governing the sport of athletics worldwide. It has its registered seat in Monte Carlo, Monaco. In these proceedings, WA is represented by the Athletics Integrity Unit (the "**AIU**") as per Rule 1.2.2 of the World Athletics Anti-Doping Rules, in force from 1 January 2025 (the "**WA ADR 2025**").

2. The Respondent, Ms. Madhuri Kale (the "**Athlete**" or "**Ms. Kale**") is a 27-year-old amateur athlete from Nashik, India, specialised in half marathon running.

3. Hereunder, WA and the Athlete are each referred to individually as a "**Party**" and collectively as the "**Parties**".

II. FACTUAL BACKGROUND

4. On 8 December 2024, Ms. Kale participated in the Indian Oil WMC Navy Half Marathon (the "**Event**"), designated as a World Athletics Label Road Race.

5. Ms. Kale secured first place at this Event with a finishing time of 1 hour and 35 minutes.

6. On the same day, the Athlete provided an In-Competition urine Sample, assigned the code 8217259 (the "**Sample**"). The Sample was collected by the National Anti-Doping Agency of India ("**NADA India**"), with the AIU serving as the testing authority.

7. An analysis of the Sample was conducted by the World Anti-Doping Agency ("**WADA**") accredited laboratory in New Delhi, India (the "**Laboratory**"), which detected the presence of mephentermine and phentermine (the latter below WADA-MRL), resulting in an Adverse Analytical Finding ("**AAF**"). The estimated concentration of mephentermine in the Sample was reported as 3,187 ng/mL (equivalent to 3.2 µg/mL).

8. Mephentermine is a Prohibited Substance under the WADA 2024 Prohibited List under the category S6.A: Non-Specified Stimulants. It is a Non-Specified Substance prohibited In-Competition.

9. The AIU reviewed the AAF in accordance with Article 5 of the WADA International Standard for Results Management ("**ISRM**") and determined that:

   a) the Athlete did not have a Therapeutic Use Exemption ("**TUE**") that had been granted (or that will be granted) for the mephentermine found in the Sample; and

   b) there was no apparent departure from the WADA International Standard for Testing and Investigations ("**ISTI**") or from the WADA International Standard for Laboratories ("**ISL**") that could reasonably have caused the AAF.

10. On 8 January 2025, the AIU issued the Athlete with a Notice of Allegation of Anti-Doping Rule Violations ("**ADRVs**"), which imposed a Provisional Suspension (effective immediately), and invited her to confirm how she wished to proceed with several matters, including in relation to any challenge to the Provisional Suspension, analysis of the B Sample, and explanation for the AAF, the latter to be submitted by 15 January 2025.

11. On 9 January 2025, the Athlete replied to the AIU and asked for clarification of the Notice of Allegation as well as the "*reason for suspension*". [sic].

12. On 14 January 2025, the AIU replied to the Athlete and explained that the Notice of Allegation set out why a Provisional Suspension had been imposed upon her and reminded her that she had until 15 January 2025 to provide an explanation for the AAF.

13. On 15 January 2025, the Athlete responded to the AIU and stated that she was "*not taking any kind of drugs those you mention in this mail*". [sic].

14. On the same day, the AIU replied to the Athlete and noted that she had not provided an explanation for the AAF. The AIU exceptionally granted the Athlete until 17 January 2025 to provide a (further) reply, allowing her additional time to present an explanation for the AAF.

15. On 16 January 2025, the Athlete submitted a further reply to the AIU and repeated that she was "*not taking any kind of drugs those you were mentioned in above mail*". She also stated that she did not know "*how result is get positive*" and that she disagreed with the allegations. [sic].

16. On 14 February 2025, following a review of the Athlete's explanation for the AAF, the AIU remained satisfied that she had committed ADRVs as set out in the WA ADR 2025 and issued the Athlete with a Notice of Charge ("**NoC**") in accordance with Rule 8.5.1 WA ADR 2025 and Article 7.1 ISRM.

17. By the NoC, the Athlete was charged with committing the following ADRVs (the "**Charge**"), namely:

a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, pursuant to Rule 2.1 WA ADR, by virtue of the presence of mephentermine in the Sample; and

b) Use of a Prohibited Substance (i.e. mephentermine), pursuant to Rule 2.2 WA ADR.

18. In the NoC, the AIU specified that the Consequences being sought by it (which shall have binding effect on all Signatories to the World Anti-Doping Code ("**WADA Code**"), in all sports and countries, as per WADA Code Article 15) are:

> *"4.1.1. **mandatory period of Ineligibility of four (4) years** […] effective from the date of the final decision in this matter, with credit for the period of Provisional Suspension since 8 January 2025 (provided that this has been effectively served);*
>
> *4.1.2. **Disqualification of your results** with all resulting consequences including forfeiture of any medals, titles, points, prize money and prizes since 8 December 2024; and*
>
> *4.1.3. **Public Disclosure**: the AIU shall Publicly Disclose the full details of the matter in accordance with Rule 14.3.2."*

19. On 28 February 2025, the Athlete responded to the NoC, among other things, denying the Charge and exercising her right to request a hearing before the Disciplinary and Appeals Tribunal.

20. On 24 March 2025, at the request of the Athlete, Ms. Kuwelker agreed to act as pro bono counsel to the Athlete, having been sourced through Sport Resolutions' Pro Bono Legal Advice & Representation Service.

III. PROCEDURE BEFORE THE DISCIPLINARY AND APPEALS TRIBUNAL

21. On 25 April 2025, the Chairman of the Disciplinary and Appeals Tribunal (the "**DAT**") appointed Dr Anna Bordiugova, attorney-at-law, Ukraine, to act as Chair of the Panel to hear this matter.

22. On 13 May 2025, based on the Parties' written agreement, Directions were issued for the Parties to submit their written briefs. A preliminary date for the remote hearing was set. The Parties agreed that the NoC and its enclosures, dated 14 February 2025, served as the AIU Brief and Exhibits in this matter.

23. On 4 June 2025, the Athlete provided her Answer Brief.

24. On 18 June 2025, the AIU filed its Reply Brief.

25. On 3 July 2025, the hearing scheduled for 8 July 2025 was vacated and adjourned due to the unavailability of the AIU's representative.

26. The hearing took place on 16 July 2025 via video conference, with both Parties in attendance. The Panel was assisted by Ms. Freya Pock, Case Manager at Sport Resolutions acting as Secretariat to the DAT.

27. The following individuals attended the hearing:

    For the AIU:

    a) Mr. Tony Jackson, AIU Deputy Head of Case Management;

    For the Athlete:

    b) Ms. Madhuri Kale, Athlete;

    c) Ms. Surbhi Kuwelker, Athlete's *pro bono* counsel.

28. At the outset of the hearing, both Parties confirmed that they had no objections to the composition of the Panel. No preliminary or procedural issues were raised.

29. During the hearing, the Parties were given the opportunity to present their cases, comment on the evidence, submit their arguments, and respond to questions posed by the Panel. The Athlete attended the hearing solely to provide her testimony and was not present for its entirety. Both the Parties and the Panel had the opportunity to examine and cross-examine the Athlete. At the conclusion of the hearing, the Parties confirmed their satisfaction with the conduct of the proceedings and the manner in which they were treated by the Panel.

30. The Panel confirms that all submissions, evidence, and arguments presented by the Parties were carefully heard and considered in reaching a decision, even if not all are specifically summarised or referenced in the following sections.

IV. APPLICABLE LAW AND JURISDICTION

31. Since the Athlete was charged on 14 February 2025, the matter has been conducted procedurally in accordance with the WA ADR 2025.

32. The Sample was collected from the Athlete on 8 December 2024 and subsequently revealed the presence of a Prohibited Substance, indicating potential violations relating to "Presence" and "Use". At the time of the Sample collection, the World Athletics Anti-Doping Rules 2024 ("**WA ADR 2024**") were in force and therefore apply as the material rules. It should be noted, however, that Rules 2.1 and 2.2 are identical in both the 2024 and 2025 versions of the ADR, with no substantive difference in content.

33. It is common ground between the Parties that the applicable editions of the ADR are as set out above, namely, that the WA ADR 2025 governs the procedural aspects of the case, while the WA ADR 2024 applies to the substantive elements of the asserted violations.

34. The Athlete did not dispute the jurisdiction of the WA, applicability of its ADR, the authority of the AIU, or the Chair's role as the sole member of the Panel constituted to determine this matter. Accordingly, no jurisdictional issues arose.

35. Pursuant to Rule 1.3 WA ADR 2025 in conjunction with Rule 8.2(a) WA ADR 2025, the DAT has jurisdiction over all matters where ADRVs are asserted.

V. STANDARD OF PROOF

36. Pursuant to Rule 3.1 WA ADR 2025, the following burdens and standards of proof are established:

*"**3.1 Burdens and Standards of Proof***

The Integrity Unit or other Anti-Doping Organisation will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the Integrity Unit or other Anti-Doping Organisation has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability."

37. Consequently, it is the burden of the AIU to establish to the comfortable satisfaction of the Panel that the ADRVs were committed by the Athlete.

VI. THE PARTIES' SUBMISSIONS

A. The AIU

38. As mentioned in paragraph 22 above, the Parties agreed that the NoC and its enclosures dated 14 February 2025 served as the AIU Brief and Exhibits in this matter. The request of the AIU put forward in the NoC is quoted in paragraphs 17-18 above.

39. The AIU, all in all, has made the following requests for relief that were defended at the hearing:

a) To rule that the DAT has jurisdiction over the present matter;

b) To find that Ms. Kale has committed ADRVs, pursuant to Rule 2.1 and Rule 2.2 ADR;

c) To rule that Ms. Kale shall serve a period of Ineligibility of four (4) years for the ADRVs, based on Rule 10.2.1 ADR and commencing on the date of the DAT's award;

d) To rule that Ms. Kale shall be given credit for the period of the Provisional Suspension served from 8 January 2025 until the date of the DAT's award against the period of Ineligibility imposed for the ADRVs (provided that the Provisional Suspension has been effectively served);

e) To order the Disqualification of any results obtained by Ms. Kale since 8 December 2024 with all resulting Consequences including the forfeiture of any medals, titles, awards, points and prizes, and appearance money in accordance with Rule 9 and Rule 10.10 ADR;

f) To award World Athletics a contribution towards its legal and other costs (including the costs of the proceedings before the Disciplinary and Appeals Tribunal) pursuant to Rule 10.12.1 ADR.

B. The Athlete

40. The Athlete made the following requests for relief that were defended at the hearing:

a. On Ineligibility

a) Accepting that she might be unable to prove non-consumption in her circumstances, Ms. Kale requests for a reduction of the four (4) year period of Ineligibility, to the extent possible, based on grounds argued in the Answer Brief, and at the very least, on the grounds of No Significant Fault or Negligence, under Rule 10.6.2 ADR;

b) Ms. Kale requests that the period of Ineligibility already served due to the Provisional Suspension, which commenced on 8 January 2025, be taken into account in ascertaining future Ineligibility and that money earned from races significantly contributes to her relative cumulative income in India; and

c) Ms. Kale consents to the annulment of the results at the Event on 8 December 2024 and any subsequent results obtained up to 8 January 2025, when the Provisional Suspension commenced. The Athlete further agrees that Public notice is to be issued in accordance with the WA ADR 2025.

b. On Costs

d) Ms. Kale requests that the Panel deny any application by World Athletics for an order of costs against her pursuant to Rule 10.12.1 WA ADR 2025; and

e) Ms. Kale further requests that each party be directed to bear its own costs in these proceedings.

c. Other

f) To order any further additional relief as the Panel may deem appropriate in the circumstances.

41. The Athlete's arguments put forward in her Answer Brief can be summarised as follows:

41.1 Ms. Kale began to run as part of her training for a government examination to qualify for a job with the Indian government and has, since 2018, competed as amateur athlete, in four (4) or five (5) half-marathon races in India. She placed in the top three (3) in two (2) of those races;

41.2 She has never otherwise had a sports background and has always trained independently, without the guidance of a coach, support staff, or advice from anyone within the sports industry or a federation;

41.3 Ms. Kale retired from her position with the Government of India's Border Security Forces in Nashik, India in May 2025. She currently does not hold any position of full- or part-time employment;

41.4 Ms. Kale was neither advised nor aware of the potential utility that she could request analysis of her B Sample within the deadline of 15 January 2025, one week from the receipt of the Notice of Allegation. The Notice of Allegation also stated that she would be responsible for bearing the associated costs. At the time, she was unaware of the potential utility of such a request. Although she later requested a hearing on 28 February 2025, she did not request any further laboratory documentation, in part because the Notice of Allegation also indicated that the costs for such documentation would be borne entirely by her. In the absence of legal counsel, and while consistently denying the consumption of the Prohibited Substance, Ms. Kale also did not pursue the options outlined in the Notice of Allegation, namely, entering into a

case resolution agreement or admitting the ADRVs in exchange for a one (1) year reduction in the period of Ineligibility by the deadline of 6 March 2025;

41.5 Despite having reviewed her dietary and supplement intake and noting that she had not consumed anything which contain the substance found in her Sample, and as it was not a common contaminant, the Athlete is unsure how or where she could have ingested it;

41.6 On 8 April 2025, noting that Ms. Kale had only received effective counsel, as offered to be coordinated by Sport Resolutions, from 24 March 2024, the AIU, over email, was asked by Ms. Kale to clarify the ongoing availability of certain rights, without prejudice to her right to a fair and full future hearing before the Disciplinary and Appeals Tribunal, stating that while she "*strongly continues to maintain no knowing, intentional or negligent consumption of the substance resulting in an Adverse Analytical Finding as mentioned in the AIU's Notice of Charge of 14 February 2025, she wished to highlight that she has limited physical, financial and human resources (including no coach, staff, or medical team) to investigate and gather further information connected to her consumption and the circumstances surrounding the concerned race in December 2024 and is concerned about potential consequences of a hearing, including costs possible to be imposed on her. Ms. Kale had not been advised on her option to request a testing of B Sample, or to consider other options such as her rights to a case resolution agreement or potential for reduced ineligibility under Rules 10.8.2 and 10.8.1, respectively*";

41.7 On 15 April 2025, the AIU responded stating: "*Pursuant to Rule 10.8.1 of the World Athletics Anti-Doping Rules, the (strict) 20-day deadline for the 1-year reduction of the period of Ineligibility has expired. Therefore, it is no longer possible to benefit from the automatic reduction in accordance with that provision. Additionally, in circumstances where Ms. Kale maintains no knowing/intentional ingestion without any further explanation (and apparently lacks the means to investigate and gather any further information to provide an explanation), the AIU cannot conduct any assessment of Fault for the purpose of reaching any agreement by way of a case resolution agreement under Rule 10.8.2. There is therefore no need for discussion on these points";*

41.8 Ms. Kale strongly denies having consumed the Prohibited Substance or having committed any ADRVs. Her ability to effectively contest the Charges has been significantly hindered by limited financial and human resources, which made it difficult to investigate, request the opening of the B Sample, or obtain necessary laboratory documentation. Additionally, she lacked timely access to legal counsel, coaching staff, or other professional guidance. Ms. Kale also faced considerable challenges in responding independently, particularly due to her limited comfort with English, especially with technical language contained in the Notice of Allegation and in email communications further impairing her ability to respond adequately and in time. Moreover, she has received little to no education regarding anti-doping rules, procedures, or the importance of recording substances consumed, particularly around competition periods. Without such awareness or guidance, it became practically impossible to identify or test any item that may have been consumed or contaminated during December 2024 while she was in another city and leaving her only a week to respond;

41.9 The Athlete recollects certain facts, such as consuming one can of the energy drink *Red Bull*, and drinking water from a fellow competitor's bottle, but no other further detail, or way to contact the fellow athlete in retrospect. She has otherwise had a clean doping history, with no AAF or ADRV prior to this;

41.10 The Athlete finds herself caught in a difficult situation of being unable to satisfy the burden to disprove the ADRVs due to being unable to collect evidence within the requisite time, or to prove at all how the Prohibited Substance entered her system. These factors have also been considered important in previous anti-doping decisions, including in past matters before the DAT. In addition, such decisions have explicitly taken into account whether the individual can be regarded as a "professional athlete" especially when they hold other jobs and do not earn their livelihood solely through sport, as is the case here;

41.11 In determining the Consequences of the alleged ADRVs against the Athlete, consideration should be given to the Athlete's inexperience, non-elite and non-professional status in the sport, limited ability to conduct her own investigation due to language barriers and lack of resources, and the level of care she exercised

relative to the perceived risk. These factors are consistent with established DAT decisions and Court of Arbitration for Sport ("**CAS**") jurisprudence;

41.12 The Athlete submits that, as in cases such as *WA v Bakry*, there should be an evaluation of the degree of Fault, as required when exercising the discretion available to the Panel under Rule 10.6.2 ADR. This assessment should be conducted within the "standard" range to allow for a reduction in the period of Ineligibility, on the grounds of No Significant Fault or Negligence on her part;

41.13 It is submitted that this case falls within the narrow scope for a reduction of sanction on the grounds of No Significant Fault. Although Ms. Kale is unable to establish the exact source of the Prohibited Substance due to her personal circumstances, factors recognised in established jurisprudence indicate she should not be subjected to the same punishment as an athlete whose ingestion of a Prohibited Substance was known and intentional. Imposing a four (4) year period of Ineligibility would effectively equate her conduct with that of a professional athlete supported by a well-resourced team and acting with deliberate intent to cheat. Applying the letter of the law in this manner would result in Ms. Kale receiving the same sanction, despite her lack of knowledge of the rules and limited access to resources necessary to defend herself;

41.14 The sanction's disproportionality is heightened by the fact that even well-supported, high-profile athletes across sports have faced unintentional ingestion making it more likely for athletes like Ms. Kale to be similarly affected. This is especially harsh given the added penalties of prize forfeiture and public disclosure, which she acknowledges will follow;

41.15 Credit should be afforded for the time Ms. Kale has already served under Provisional Suspension. While she makes the above submissions for a reduction of the period of future imposed Ineligibility, she does not contest that the Panel should annul her results between 8 December 2024 and 8 January 2025 (and all resulting Consequences, including forfeiture of titles, awards, medals, points and prizes) before she began to serve her Provisional Suspension;

41.16 From the outset, Ms. Kale has been mindful of the hearing costs, raising the issue in her emails to the AIU and making efforts to present all relevant information to explore

whether the matter could be resolved without a hearing, taking all the above circumstances into account. The Panel must account for factors such as the potential period of Ineligibility, forfeiture of prize money (or other awarded financial gain), and particularly in the context of an athlete such as Ms. Kale's current economic background, as there is already a considerable financial burden on her dependent of being not able to compete occasionally in races as a source of supplementary income. In *WA v Taoussi*, the AIU's request for costs was therefore rejected in light of parallel burdens created due to the Consequences of the period of Ineligibility imposed (four years). The Athlete therefore submits that any prayers of the AIU for imposing additional Financial Consequences (recovery of costs in determining the ADRV and associated with the hearing) be denied by the Panel.

C. The AIU's Rebuttal

42. In rebuttal to the Athlete's submissions, the AIU, in its Reply Brief, responded as follows:

a. As to Burden of Proof

42.1 The AIU understands that the Athlete does not dispute that she has committed ADRVs based on the AAF. However, she does dispute the Consequences that should be imposed on the basis that the ADRVs were not intentional and argues that she should be afforded a further reduction in the period of Ineligibility for No Fault or Negligence (Rule 10.5 ADR) or No Significant Fault or Negligence (Rule 10.6.2 ADR);

42.2 Rule 10.2.1 ADR provides clearly that the Athlete bears the burden of establishing that the ADRVs were not intentional to reduce the period of Ineligibility from the mandatory period of four (4) years - the AIU submits that the Athlete's case falls at the first hurdle; she cannot satisfy her strict burden to establish that the ADRVs were not intentional (and therefore No Fault or Negligence or No Significant Fault or Negligence cannot be applied in her case);

42.3 As recognised by the Athlete, in all but the very rarest and exceptional of cases, it is a prerequisite that an athlete establishes the origin of the relevant Prohibited Substance(s) to demonstrate an absence of intent. The Athlete accepts the CAS

jurisprudence in this respect, which is clear that save in the most exceptional of cases, an athlete cannot demonstrate a lack of intent unless they prove source, i.e. when and how the Prohibited Substance entered their system based on concrete evidence;

42.4 The Athlete accepts that she has no explanation for the AAF. The Athlete states that she reviewed her dietary and supplement regime (*ex post facto*) and recalls that she consumed Red Bull and drank water from a fellow competitor's water bottle. The Athlete's case on origin therefore rises to little more than mere speculation or hypothesis. No positive case has been advanced on the source of the mephentermine and phentermine that were detected in the Athlete's Sample (and no evidence whatsoever has been provided;

42.5 Recognising the limitations of her own case against the body of CAS case law, the Athlete asks the Disciplinary and Appeals Tribunal to find that her case is so exceptional as to be permitted to pass through the narrowest of corridors described in the CAS jurisprudence due to her individual circumstances, relying upon her alleged lack of means or resources (including access to legal counsel and to coaches and doctors to assist or advise her), a language barrier, no (formal) anti-doping education and that she is not a "*professional*" athlete. However, as described in *CAS 2017/A/5016 Abdelrahman v Egyptian Anti-Doping Organization (EGY-NADO) and CAS 2017/A/5036 WADA v Abdelrahman & EGY-NADO*, the Athlete, even if not strictly bound to prove origin, "*has to show on the basis of the objective circumstances of the anti-doping rule violation that specific circumstances exist disproving his* [her] *intent to dope*" (see para. 124). The AIU submits that the circumstances put forward by the Athlete are either irrelevant and/or manifestly insufficient to demonstrate that she had no intent to dope;

42.6 Moreover, the Athlete's reliance on the *WA v Bakry* case in support of her submission is entirely erroneous. In *WA v Bakry*, the Athlete tested positive for a Specified Substance (Dexamethasone). The Athlete was not required to disprove intent (and it was therefore not contested). The matter related exclusively to the period of Ineligibility to be imposed based on Fault, and, in that context, the AIU recalls that Mr. Bakry produced clear, compelling, concrete evidence as to how Dexamethasone

came to be present in his Sample (repeated injections given on prescription over a period of six (6) weeks);

42.7 Without having established the origin of the mephentermine in her Sample, the Athlete's case is plainly insufficient to pass through the narrowest of corridors according to the consistent line of CAS jurisprudence. The Athlete should be found to have failed to satisfy her burden to demonstrate that the ADRVs were not intentional and should be subject to a period of Ineligibility of four (4) years pursuant to Rule 10.2.1(a) ADR.

b. As to Proportionality

42.8 As a matter of principle, questions of proportionality cannot arise where source is not established. Moreover, the CAS case law has made clear that there is no scope for application of the principle of proportionality in an anti-doping context;

42.9 As noted by the CAS Panel in CAS 2018/A/5546 *Guerrero v. FIFA* and CAS 2018/A/5571 *WADA v. FIFA & Guerrero*:

"86.

[…]

In CAS 2016/A/4534, when addressing the issue of proportionality, the Panel stated:

> *"The WADC 2015 was the product of wide consultation and represented the best consensus of sporting authorities as to what was needed to achieve as far as possible the desired end. It sought itself to fashion in a detailed and sophisticated way a proportionate response in pursuit of a legitimate aim (para. 51).*

87. In CAS 2017/A/5015 and CAS 2017/A/5110, the CAS Panel, with a further reference to CAS 2016/A/4643, confirmed the well-established perception that the WADC "has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction" (emphasis added, para. 227) as was vouched for by an opinion of a previous President of the European Court of Human Rights there referred to

see https://www.wada-ama.org/en/resources/legal/legal-opinion-on-the-draft-2015-world-anti-doping-code."

43. The AIU therefore submits that the Athlete's proportionality arguments should be dismissed and the mandatory period of Ineligibility of four (4) years should be imposed.

VII. MERITS

44. As a starting point, the Panel would like to quote Rules 2.1 and 2.2 WA ADR 2024, which state:

> *"**2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample***
>
> *2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish a Rule 2.1 anti-doping rule violation.*
>
> 2.1.2 *Sufficient proof of an anti-doping rule violation under Rule 2.1 is established by any of the following: (i) the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed;* […].
>
> ***2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method***
>
> 2.2.1 *It is the Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's part in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*"

45. In accordance with the above provisions, the Panel further notes that the Athlete does not contest the AAF in the Sample and does not contest that she has committed ADRVs

pursuant to Rule 2.1 and 2.2 WA ADR, namely for “Presence” and “Use”. Indeed, the mere presence of the Prohibited Substance in an athlete’s sample, in accordance with the Strict Liability principle, applied in doping cases, is enough to establish a violation regardless of the level of Fault of an athlete (i.e. intent or Negligence, or No Fault at all). Nevertheless, regardless of the surrounding circumstances, which will be analysed below, it has been established that the Athlete waived her right to have the B Sample analysed. In the absence of evidence to the contrary, sufficient proof exists to establish an ADRV under Rule 2.1.

46. Thus, as stated above, the level of Fault is relevant only when the Consequences of an ADRV are to be established and this is exactly what is in dispute between the Parties. Therefore, the Panel is called to resolve these two (2) questions:

a) What is the Athlete’s level of Fault?

b) What are the Consequences to be applied to the Athlete based on her level of Fault for committing ADRVs?

47. These questions will be answered in turn.

a) What is the Athlete’s level of Fault?

48. The Panel initially notes that the Athlete claims to bear No Significant Fault or Negligence in committing the ADRVs that she is charged with. The Athlete maintains in all her submissions that she did not take the Prohibited Substance, at least not knowingly, however possibly inadvertently, and that she does not know the origins of the Prohibited Substance found in her Sample. She ruled out any possibility that the Prohibited Substance came from any medication, over-the-counter products, or daily consumable items.

49. Ms. Kale alleged that she drank water from a fellow athlete’s water bottle and that she consumed an energy drink (Red Bull); however, she failed to provide any evidence in corroboration of this in her statements. During the hearing, in addition to these two hypotheses, Ms. Kuwelker, on the Athlete’s behalf, suggested that the source of the Prohibited Substance could have been a tablet of Vicks Action 500, which the Athlete had

declared in her Doping Control Form ("**DCF**"). In support of this argument, she referred during the hearing to CAS 2002/A/376 *Baxter v International Olympic Committee (IOC)*.

50. In accordance with the definition given in Appendix 1 to the WA ADR 2025, "*Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Rule 10.6.1 or 10.6.2."* [Emphasis added]

51. Appendix 1 to WA ADR 2025 further distinguishes the following levels of Fault, namely:

> *"**No Fault or Negligence:** The Athlete or other Person's establishing that they did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that they had Used or been Administered the Prohibited Substance or Prohibited Method or otherwise violated and anti-doping rule. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered their system.*" [sic]
>
> *"**No Significant Fault or Negligence:** The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered their system."*

52. Further, in accordance with Rule 10.2.3 ADR: "*As used in Rule 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in*

conduct that they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition will not be considered 'intentional' if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

> *[Comment to Rule 10.2.3: Rule 10.2.3 provides a special definition of 'intentional' that is to be applied solely for purposes of Rule 10.2. Beyond Rule 10.2, the term 'intentional' as used in these Rules means that the person intended to commit the act(s) based on which the Anti-Doping Rule Violation is asserted, regardless of whether the person knew that such act(s) constituted an anti-doping rule violation.]".*

[Emphasis added].

53. It is against these definitions that the Panel has to evaluate the level of Fault of the Athlete in committing the ADRVs in the case at hand.

54. The Panel initially notes that according to Rule 1.5 ADR the responsibilities of Athletes are determined as follows:

> "*1.5.1 Athletes must:*
>
> *(a) be knowledgeable of and comply with these Anti-Doping Rules at all times;*
>
> *(b) know what constitutes an anti-doping rule violation and the substances and methods that have been included on the Prohibited List;*
>
> *(c) be available for Sample collection at all times;*
>
> *(d) take responsibility, in the context of anti-doping, for what they ingest and Use;*

(e) *carry out research regarding any products or substances that they intend to Use (prior to such Use) to ensure that Using them will not constitute or result in an anti-doping rule violation."*

[…]

[Emphasis added].

55. The Panel, however, notes that the Athlete has not been diligent in the discharge of her duty to be knowledgeable of the ADR, although she has experience in half-marathon running since 2018, and that she has not exercised utmost caution in acting to avoid a Prohibited Substance entering her system, when, for example, drinking from another competitor's water bottle.

56. First and foremost, the Panel observes that the Athlete puts an emphasis on the fact that she has had no coaching or medical support, has never belonged to any sports organisation, and has no anti-doping education.

57. In this regard, the Panel finds it difficult to believe that an athlete who has regularly participated in races since 2018, particularly at the high level of WA Label Road Races, would remain entirely passive and show no curiosity or initiative regarding anti-doping matters. During the hearing, Ms. Kale stated that she was invited to participate in the Event via email, as her email address was on a mailing list used to notify individuals about upcoming editions of the Event. In these circumstances, any diligent person engaged in sport would be expected to make at least some effort to understand anti-doping requirements.

58. Moreover, the Athlete stated that she participates in half-marathon races to earn additional income to support her livelihood. During the hearing, she explained that her monthly income from her regular employment is approximately 4,000 Indian Rupees (INR), that the entry fee for the race in which she was subjected to doping control was 1,400 INR, and that she earned 30,000 INR from the race held on 8 December 2024, which is approximately seven times her monthly salary. In light of these circumstances, the Panel concludes that the Athlete should have made a true effort to understand the rules and regulations that she is obliged to follow, before entering or participating in the competition.

59. Regarding the anti-doping education that the Athlete allegedly lacks, the Panel notes that no particular effort was needed on the Athlete's part and is in no way dependent on the presence or the absence of coaching or medical staff. Indeed, many people who participate in long distance running, and it is well-known fact, train on their own. The official website of NADA India is detailed and well-structured, providing comprehensive information that the Athlete could have easily accessed and understood during the years she has been competing (since 2018). This would have allowed her to gain at least a basic understanding of how the anti-doping system operates, what constitutes an ADRV, what is expected of athletes to avoid committing such violations, and the specific procedures that apply in cases of ADRVs, particularly in "Presence" cases, which are the most common.

60. Further, the Panel notes that while the Athlete claims she had no information regarding the Charge and the specifics of the disciplinary proceedings initiated against her by the AIU, she could have familiarised herself with the Results Management procedure simply by reading the documents and clarifications readily available on the NADA India website, had she made the effort to do so.

61. Therefore, the Panel concludes that, due to her own inaction, the Athlete failed to exercise any of her procedural rights, such as requesting the opening of the B Sample, engaging in negotiations for a potential case resolution agreement, or making a prompt admission that could have resulted in a one (1) year reduction in the asserted period of Ineligibility.

62. However, the Panel also notes that the Athlete's response to the NoC, submitted to the AIU on 28 February 2025 and reportedly prepared with the assistance of a friend who is a law student, appears to be professionally written and demonstrates a solid understanding of anti-doping matters. The response includes, among other things, requests for information, laboratory documentation, and further details regarding the substance in question. This suggests that the Athlete had been advised of her rights. Nevertheless, for reasons she attributes to financial constraints, she chose not to exercise those rights. The Panel finds that these financial concerns could have potentially been addressed through negotiations with the AIU, including the possibility of arranging a payment plan.

63. The Panel is of the opinion that the Athlete cannot now hide behind her own omission in order to argue that she has no doping education and further argue that this as a mitigating factor in evaluating the level of Fault in committing ADRVs.

64. The Panel here would like to quote the CAS award in proceedings CAS 2020/A/6978 *Iannone v FIM* and CAS 2020/A/7068 *WADA v FIM and Iannone*, where it was underlined that "… *the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence establishing, on a balance of probabilities, a lack of intent (see for example, CAS 2017/A/5369; CAS 2016/A/4919, CAS 2016/A/4676; CAS 2017/A/5335)*". (See paragraph 134).

65. This is precisely the case in the present matter, where the Athlete failed to provide any evidence in support of her statements of innocence and her alleged lack of intent to ingest the Prohibited Substance.

66. Even if she could have proven that she consumed Red Bull before the competition, the Panel considers it highly unlikely that the drink contained a Prohibited Substance, because this drink is known to be used by many athletes pre-competition (is indeed often declared in DCFs) and it is not known as the one potentially containing any prohibited substance, more so such a particular one as mephentermine. During these proceedings the Athlete did not provide any information regarding Red Bull drink being the cause of an ADRV.

67. If the Athlete were able to prove that she drank water from the bottle of another athlete, which could have possibly contained the Prohibited Substance, this could equally lead to the conclusion that she acted with an indirect intent.

68. The Panel is mindful of CAS jurisprudence, which confirms that intent is established when an athlete knowingly ingests a Prohibited Substance. However, an athlete's conduct may also be considered intentional if they act with indirect intent, that is, when their primary focus is on achieving a particular outcome, but they also accept the possibility of an adverse result occurring as a consequence of their actions. In such cases, even if the athlete does not directly seek to commit an ADRV, their disregard for potential risks

reflects a level of acceptance and therefore constitutes indirect intent. It is well established that athletes bear personal responsibility for everything they consume or ingest.

69. Regarding the possibility that Vicks Action 500, taken by the Athlete, could have been a source of the ADRV, the Panel also finds this argument entirely unsubstantiated. This case is not similar to CAS 2002/A/376 *Baxter v International Olympic Committee (IOC)* as the substance in the Vicks medication was methamphetamine, not mephentermine. In that case Mr. Baxter was able to prove the source of the Prohibited Substance, because levmetamfetamine was listed as an active ingredient in the Vicks inhaler, used by Mr. Baxter and the concentration of the Prohibited Substance in his sample was consistent with the use of the Vicks inhaler.

70. In the present case, the Athlete did not test the medication she used to prove that it might have contained mephentermine and did not produce any packaging to demonstrate that the Prohibited Substance was listed as an ingredient.

71. Additionally, the concentration of the Prohibited Substance, found in the Athlete's Sample, is registered in milligrams, not nanograms, which is usually the case in contamination cases. Therefore, this argument of the Athlete's counsel is entirely ruled out.

72. Further, the Panel is particularly concerned about the amount of open-source information available on the abuse of mephentermine, precisely in India, where the Athlete comes from and resides.[1] India is the only country where the sale of mephentermine is not prohibited.

[1] Wikipedia contributors. (n.d.). Mephentermine. Wikipedia. Retrieved July 22, 2025, from https://en.wikipedia.org/wiki/Mephentermine; Kumar, A., & Verma, S. (2023). Mephentermine abuse: An age-old concern with new perspectives. Anesthesia, Pain & Intensive Care, 27(3). https://journals.lww.com/aips/fulltext/2023/07030/_mephentermine_abuse__an_age_old_concern_with_new.14.aspx; Singh, D., & Singh, N. (2020). Mephentermine abuse: A review. PMC. https://pmc.ncbi.nlm.nih.gov/articles/PMC7607562/; Sharma, R., & Singh, M. (2021). Mephentermine abuse: Clinical perspectives. KJP Online, 29(2), Article 361. https://kjponline.com/index.php/kjp/article/view/361

73. Notably, two of the three athletes, whose samples tested positive for mephentermine and who were subsequently sanctioned by World Athletics in 2015 and 2016, were from the same country as the Athlete.[2]

74. In consideration of the totality of the facts, as described above, the Panel is of the view that the Athlete did not offer any plausible scenario for the presence of the Prohibited Substance in her Sample.

75. Since the Athlete failed to provide any plausible explanation for how the Prohibited Substance entered her system, and considering that she competes for financial gain and that this particular Prohibited Substance is known to be commonly abused in India, the Panel can reach only one conclusion: the Athlete has not succeeded in proving that the Prohibited Substance was Used unintentionally. This conclusion is further supported by the notably high concentration of the Prohibited Substance found in her Sample.

76. For the reasons set out above, the Panel concludes that the AIU has proven the Charge to her comfortable satisfaction, and that the ADRVs pursuant to Rules 2.1 and 2.2 ADR have been established, and that these ADRVs were committed intentionally.

b) What are the Consequences to be applied based on the Athlete's level of Fault?

Period of Ineligibility

77. Rule 10.2 ADR is, in part, relevant for the case at hand and reads as follows:

> ***"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***
>
> *The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*

[2] World Athletics. (n.d.). List of athletes currently serving a period of ineligibility as a result of an anti-doping rule violation under IAAF rules [PDF]. Retrieved July 22, 2025. https://worldathletics.org/download/download?filename=06205d20-9f25-4273-ad38-be0cbd67a40e.pdf&urlslug=List+of+athletes+currently+serving+a+period+of+ineligibility+as+a+result+of+an+anti-doping+rule+violation+under+IAAF+rules

10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:

(a) The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional." […]

78. Mephentermine is a Non-Specified Substance, Non-Specified Stimulant, prohibited In-Competition. In fact, the Prohibited Substance was found in the Athlete's In-Competition Sample. Consequently, the period of Ineligibility should be four (4) years unless the Athlete can establish that the ADRV was not intentional. She could have done so by establishing that the Prohibited Substance was used Out-of-Competition in a context, not connected to sport performance. However, she did not.

79. The burden is on the Athlete to establish their lack of intent, on a balance of probabilities, to fall foul of the obligations set out in the ADR so to benefit from a reduction in the period of Ineligibility imposed. However, the Athlete failed to identify the source of the Prohibited Substance, which is a necessary requirement for demonstrating No Significant Fault or Negligence. As a result, she has not rebutted the presumption of intent in this case, and a four (4) year period of Ineligibility must therefore be imposed.

80. Furthermore, the Athlete did not present any justification unrelated to Fault that would allow for the elimination, reduction, or suspension of the period of Ineligibility under Rule 10.7 ADR. Consequently, a four (4) year period of Ineligibility is to be imposed for each of the ADRVs committed by the Athlete.

81. However, in accordance with Rule 10.9.3 ADR, under "*Additional rules for certain potential multiple violations"*:

"(a) For the purposes of imposing sanctions under Article 10.9, except as provided in Rules 10.9.3(b) and 10.9.3(c), an anti-doping rule violation will only be considered a second (or third, as applicable) violation if the Integrity Unit can establish that the Athlete or other Person committed the additional anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 7, or after the Integrity Unit made reasonable efforts to give notice, of the first

alleged anti-doping rule violation. If the Integrity Unit cannot establish this, the violations will be considered together as one single first violation and the sanction imposed will be based on the violation that carries the more severe sanction."

82. Based on the above, the Panel imposes on the Athlete the period of Ineligibility of four (4) years.

Commencement of the period of Ineligibility

83. Pursuant to Rule 10.13 ADR, the period of Ineligibility shall commence on the date the decision imposing the Consequences is issued, with credit given for the period of Provisional Suspension already served by the Athlete. On the basis that the Provisional Suspension has been respected, the period of Ineligibility imposed by this decision will be deemed to have commenced on 8 January 2025 and will therefore conclude at midnight on 7 January 2029.

Disqualification of Results and Other Consequences

84. Rule 10.10 ADR provides that:

> "***10.10 Disqualification of results in Competitions subsequent to Sample collection or commission of an anti-doping rule violation***
>
> *In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes.*"

85. Pursuant to Rule 10.10 ADR, the Panel concludes that all competitive results obtained by the Athlete from 8 December 2024 through to the beginning of the Athlete's Provisional Suspension, on 8 January 2025, shall be Disqualified, with all of the resulting

Consequences, including the forfeiture of any titles, awards, medals, points, prizes, and appearance money.

VIII. COSTS

86. The AIU, in its Reply Brief, requested that the Panel award a contribution to its costs.

87. According to Rule 10.12.1 ADR, the Panel may require the Athlete or other Person to reimburse WA for the costs that it has incurred in bringing the case where an Athlete or other Person is found to have committed an ADRV. Costs are a matter for the Panel's discretion pursuant to Rule 8.9.1(j) ADR.

88. However, during the hearing, the AIU withdrew this request, agreeing that each Party shall bear its own costs.

89. Therefore, the Panel rules that each Party shall bear its own costs incurred in connection with these proceedings.

IX. DECISION AND ORDERS

90. The DAT has jurisdiction to decide on the subject matter of this dispute.

91. The Athlete has committed ADRVs pursuant to Rules 2.1 and 2.2 WA ADR.

92. A period of Ineligibility of four (4) years is imposed upon the Athlete commencing on the date of this decision. The period of the Provisional Suspension imposed on the Athlete from 8 January 2025 until the date of this decision shall be credited against the total period of Ineligibility.

93. The Athlete's results from 8 December 2024 until the date that the Provisional Suspension was imposed, on 8 January 2025, shall be Disqualified with all resulting Consequences including the forfeiture of any titles, awards, medals, points, prizes, and appearance money.

94. Each Party shall bear its own costs incurred in connection with these proceedings.

95. All other prayers for relief are dismissed.

X. RIGHT OF APPEAL

96. This decision may be appealed exclusively to the Court of Arbitration for Sport, located at Palais de Beaulieu, Avenue Bergières 10, CH-1004, Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Rule 13.2 ADR.

97. Pursuant to Rule 13.6.1(a) ADR, the deadline for filing an appeal with the CAS is 30 days from the date of receipt of this decision.

Dr Anna Bordiugova

On behalf of the Disciplinary and Appeals Tribunal
London, UK
28 July 2025