

# The CAS censures India's National Anti-Doping Agency

Amrut Joshi, Founder of GameChanger Law Advisors and member of the *World Sports Law Report* editorial board, provides a detailed look at the recent Court of Arbitration for Sport dismissal of an appeal made by swimmer Amar Muralidharan against the decision of the Anti-Doping Appeal Panel of India's National Anti-Doping Agency, and, perhaps more importantly, the Sole Arbitrator's move to censure India's National Anti-Doping Agency for the procedural delays in Muralidharan's case, which Amrut explains should serve as a warning to other national anti-doping agencies worldwide to make sure delays do not permeate their systems.

## Introduction

On 16 April 2015, the Sole Arbitrator appointed by the Court of Arbitration for Sport ('CAS') dismissed the appeal made by Indian swimmer Amar Muralidharan against the decision of the Anti-Doping Appeal Panel ('ADAP') of the National Anti-Doping Agency ('NADA'). In 2014, the ADAP had imposed a two year period of ineligibility on Muralidharan, on the grounds that methylhexanamine, or 'MHA', was detected in his urine sample. The sample itself had been collected from an anti-doping control test organised 'in-competition,' at the 64th Indian National Aquatic Championships held in August 2010. Muralidharan was accordingly held to have committed an Anti-Doping Rule Violation under the NADA Anti-Doping Rules 2009, specifically Article 2.1<sup>1</sup>.

While Muralidharan is not the first nor the last athlete ever to be ensnared in doping, this award of the CAS is significant for another reason. In a move that should serve as a warning to other anti-doping agencies across the world, the Sole Arbitrator appointed by CAS has censured NADA for the various procedural delays that were noticed in Muralidharan's case. Although the text of the CAS award<sup>2</sup> itself has not explicitly stated that costs were imposed on NADA, there have been reports in the Indian media<sup>3</sup> that this is a rare instance of a losing appellant being given the benefit of sharing the costs with NADA. So what were the procedural delays that NADA was culpable of?

## Is justice delayed justice denied?

Article 8.3 of the NADA Anti-Doping Rules 2009 provides athletes with the right to be (a) provided fair and timely

information of the asserted anti-doping rule violation; (b) an expedited hearing for the provisional suspension; and (c) a fair hearing on whether the asserted anti-doping rule violation has been committed.

Specifically, Article 8.3.8 of the NADA Anti-Doping Rules 2009 reads as follows: 'Unless otherwise agreed between the parties, the Anti-Doping Disciplinary Panel shall:

8.3.8.1 Commence the hearing within fourteen (14) days of the notification date;

8.3.8.2 Issue a written decision within twenty (20) days of the notification date; and

8.3.8.3 Issue written reasons for the delays within thirty (30) days of the notification date.'

Further, Article 13.6.8 of the NADA Anti-Doping Rules 2009 stipulates that hearings 'should be completed expeditiously and in all cases within three (3) months of the date of the decision of the Anti-Doping Disciplinary Panel, save where exceptional circumstances apply.'

In Muralidharan's case, he was notified of the anti-doping rule violation on 20 September 2010. He was then heard for the first time, two years later on 21 September 2012. After further delays in the issuance of the award after the ADAP decision, Muralidharan's appeal was heard only on 13 March 2014 - more than four months after receiving the complete ADAP decision and more than 13 months after the required deadline under the NADA Anti-Doping Rules 2009.

Despite the Sole Arbitrator terming these delays as being "alarming," he noted that Muralidharan had not lost any chance to demonstrate that no anti-doping violation had been committed by him, and accordingly such delay did not

fundamentally violate the Athlete’s procedural rights in a manner that would result in an automatic dismissal of a violation. However, the Sole Arbitrator categorically stated that he could foresee situations where an athlete’s right to a timely and fair hearing in the first instance procedure was so fundamentally violated that such omissions in the underlying procedure could result in an automatic dismissal of a violation<sup>4</sup>.

**Are alarm bells ringing for NADA?**

Clearly, the Sole Arbitrator in Muralidharan’s case has laid the blame for procedural delays at the doorstep of NADA. The award of the Sole Arbitrator does not proffer any explanation from NADA on the reasons for the procedural delay. The concerns as regards the delay in disposing of both first instance proceedings as well as appeals is heightened as this is not the only case in which there has been a delay. As highlighted by the Indian media, there is a significant backlog of cases that the NADA is yet to dispose of, going back to 2014<sup>5</sup>.

While such delays can potentially cause irreparable damage to an athlete’s sporting career, there is an equally significant risk to the credibility of the institutional mechanisms that have been set up to fight the scourge of doping. Considering that the Ministry of Youth Affairs and Sports, a branch of the Government of India, supports the NADA’s budget, imposition of costs on NADA would, in effect, be a drain on taxpayers’ money. If such instances were to recur with alarming frequency, it would only be detrimental to the institutional and financial health of NADA.

If such costs have been imposed on NADA in Muralidharan’s case, it ought to spur the NADA and

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other national anti-doping agencies on to make sure that athletes are provided with an expedited hearing at all stages of an anti-doping investigation. The censure of NADA by CAS should also serve as a wake-up call to all other national anti-doping organisations to make sure that such delays do not permeate through their systems, thereby weakening the larger global movement against doping in sport.

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1. Please do see the Anti-Doping Rules, National Anti-Doping Agency, India (Revised as per the 2009 WADA Code) at <http://www.nada.nic.in/View/Downloads/writereaddata/ADR.pdf>. Article 2 of the NADA Anti-Doping Rules 2009 reads as follows: ‘Doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.8 of these Anti-Doping Rules (Anti-Doping Rule Violations). Athletes and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.’ Article 2.1 of the NADA Anti-Doping Rules 2009 pertains to ‘Presence of prohibited substance or its metabolites or markers in an athlete’s sample.’ This Article further provides that the athlete shall be fully responsible for any prohibited substance or its metabolites or markers found to be present in the sample.
2. See a copy of the award, CAS 2014/A/3639 Amar Muralidharan v. National Anti-Doping Agency, National Dope Testing Laboratory, Ministry of Youth Affairs & Sports, at [http://www.tas-cas.org/fileadmin/user\\_upload/FINAL\\_AWARD\\_3639\\_internet\\_.pdf](http://www.tas-cas.org/fileadmin/user_upload/FINAL_AWARD_3639_internet_.pdf)
3. See ‘Court of Arbitration slaps costs on NADA’ at <http://www.deccanherald.com/content/476680/court-arbitration-slaps-costs-nada.html>
4. See paragraph 90 of the Award, at [http://www.tas-cas.org/fileadmin/user\\_upload/FINAL\\_AWARD\\_3639\\_internet\\_.pdf](http://www.tas-cas.org/fileadmin/user_upload/FINAL_AWARD_3639_internet_.pdf)
5. See ‘NADAP has a huge backlog to clear’ at <http://www.thehindu.com/sport/other-sports/nadap-has-a-huge-backlog-to-clear/article5610455.ece>



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