



BCCI/HQ/35A/3655/2019

30th July 2019

**DECISION OF THE BOARD OF CONTROL FOR CRICKET IN INDIA
UNDER ARTICLE 8.3 OF THE BCCI ANTI-DOPING RULES IN THE CASE OF MR AKSHAY DULLARWAR**

A. Introduction

1. The Board of Control for Cricket in India (the **BCCI**) is the national governing body for the game of cricket in India, and a full member of the International Cricket Council (the **ICC**). As such, and as part of its continuing effort to maintain the integrity of the game of cricket in India, to protect the rights and health of all participants in the game, and to keep Indian cricket free from doping, the BCCI has adopted anti-doping rules (the **BCCI ADR**) that implement the mandatory requirements of the World Anti-Doping Code in Indian cricket. It is the 2019 version of the BCCI ADR that applies to this matter. Unless otherwise specified, defined words and terms in this decision (denoted by capital letters) have the meaning given to them in the 2019 BCCI ADR.
2. Mr Akshay Dullarwar is a 22-year-old cricketer who currently plays for the Vidarbha Cricket Association. Mr Dullarwar has previously represented Nagpur University in the All India University meet (in three years), represented Maharashtra in the school games nationals (in three years), and played for Vidarbha in the Under-16 Vijay Merchant Trophy in 2012-13. Accordingly, Mr Dullarwar is and was at all material times bound by and required to comply with the BCCI ADR. He does not dispute this.
3. On 26th June 2019, after desacetyl deflazacort (a metabolite of a Prohibited Substance, deflazacort) was found in a urine sample he had provided during drug testing under the BCCI ADR, Mr Dullarwar was charged with the commission of an Anti-Doping Rule Violation (**ADRV**) under BCCI ADR Article 2.1 (presence in his Sample of a Prohibited Substance for which he did not have a TUE). He was provisionally suspended on 26th June 2019 pending determination of the charge. He promptly responded to the charge by admitting the ADRV but asserting that it was inadvertent, being caused by his ingestion of deflazacort tablets that had been prescribed to him by a doctor for treating an infection. He contended that the above facts, as well as his youth and limited anti-doping education, should be considered significant mitigating factors in determining the Consequences to be imposed on him under the BCCI ADR for his ADRV.
4. Having considered all of the evidence, the BCCI has accepted Mr Dullarwar's explanation of the cause of his ADRV, and on that basis has agreed that a period of ineligibility of eight months should be imposed, together with disqualification of certain of his results. Mr Dullarwar has accepted this proposed sanction and waived his right to a hearing before an Anti-Doping Tribunal convened under Article 8 of the BCCI ADR. Therefore this decision is issued pursuant to Article 8.3 of the BCCI ADR, which provides that when a Cricketer admits his ADRV, accedes to the Consequences specified by the BCCI, and waives his right to a hearing, a hearing before the Anti-Doping Tribunal shall not be required but instead the BCCI will **'promptly issue a public decision confirming the Cricketer's [...] admission of the anti-doping rule violation(s) charged and the**



imposition of the Agreed Sanction, including an explanation (if applicable) of any mitigating factors applied'.

B. Commission of an Anti-Doping Rule Violation

5. The BCCI contracts an independent service provider, IDTM, to collect samples from Cricketers who are subject to the BCCI ADR, to be tested for the presence of Prohibited Substances.
6. A urine sample was collected from Mr Dullarwar as part of an in-competition doping control test immediately after the Men's Under-23 One-Day match between Maharashtra and Vidarbha in Hyderabad on 10th March 2019 (the **Match**). The sample was collected in accordance with the sample collection procedures set out in WADA's International Standard for Testing and Investigations, was given reference number 3135322, and was split between sample A3135322 and reserve sample B3135322. This was the first occasion on which Mr Dullarwar had been tested by the BCCI.
7. All samples collected under the BCCI ADR are sent to a WADA-accredited laboratory to be analysed in accordance with the procedures set out in WADA's International Standard for Laboratories for evidence of the presence and/or Use of Prohibited Substances and/or Prohibited Methods. Accordingly, IDTM sent Mr Dullarwar's sample 3135322 to the WADA-accredited National Dope Testing Laboratory in New Delhi, which analysed Mr Dullarwar's sample A3135322 and reported an adverse analytical finding for desacetyl deflazacort, a metabolite of a Prohibited Substance, deflazacort, which is a Glucocorticoid that is prohibited in competition when administered by oral, intravenous, intramuscular or rectal routes, under Category S9 of the 2019 WADA Prohibited List (the **Adverse Analytical Finding**).
8. In accordance with the results management procedures set out in Article 7.5.5 of the BCCI ADR, the BCCI referred the file to an independent Review Board, which reviewed the file to determine whether (a) there was any apparent departure from the International Standard for Testing and Investigations or International Standard for Laboratories that caused the Adverse Analytical Finding; or (b) the Adverse Analytical Finding was consistent with an applicable therapeutic use exemption (**TUE**) that had been granted or that might be granted in accordance with the International Standard for Therapeutic Use Exemptions. The independent Review Board reported no such departures or TUE, and so concluded that Mr Dullarwar had a case to answer for an ADRV within the meaning of Article 2.1 of the BCCI ADR.
9. Therefore, on 26th June 2019 the BCCI sent a formal notice of charge to Mr Dullarwar, asserting that he had committed an ADRV under BCCI ADR Article 2.1, in that metabolites of a Prohibited Substance (deflazacort) had been found to be present in his urine sample A3135322. In addition, exercising the discretion given to it under BCCI ADR Article 7.7.2, the BCCI provisionally suspended Mr Dullarwar from all competition with effect from 26th June 2019.
10. An ADRV under BCCI ADR Article 2.1 is a strict liability offence, i.e., it is committed by the mere presence of the substance in the Cricketer's sample, irrespective of whether or not he ingested it deliberately or inadvertently.



11. In an email from his legal counsel to the BCCI dated 5th July 2019, Mr Dullarwar waived his right to have his reserve sample (B3135322) analysed, accepted the accuracy of the Adverse Analytical Finding reported by the New Delhi laboratory in respect of his sample A3135322, and therefore accepted that he had committed the ADRV charged.

C. Imposition of Consequences

12. This is Mr Dullarwar's first ADRV.
13. BCCI ADR Article 10.2.1 specifies that an Article 2.1 ADRV that is a first offence and that involves a substance that is classified as a 'Specified Substance' (as deflazacort is classified) carries a two-year ban as a starting-point, unless the BCCI can prove that the substance was taken with intent to cheat, within the meaning of BCCI ADR Article 10.2.3, i.e., unless it can prove either (a) that Mr Dullarwar engaged in conduct that he knew constituted an ADRV; or (b) that he engaged in conduct that he knew might constitute or result in an ADRV and manifestly disregarded that risk. The jurisprudence is clear that what counts in this context is what the Cricketer actually knew, not what he should have known.¹
14. Mr Dullarwar provided the following explanation to the BCCI of how the metabolite of deflazacort found in his urine sample 3135322 had got into his system. Each part of that explanation was supported by relevant evidence:
 - 14.1. Around 26th February 2019, when he played in a Men's Under-23 One-Day match between Punjab and Vidarbha in Jaipur, Mr Dullarwar started suffering with a skin ailment. After the match, he travelled back to Nagpur and, on 5th March 2019, he attended Advanced Holistic Medio Care, a medical clinic in Nagpur.
 - 14.2. At the clinic, a doctor assessed Mr Dullarwar, diagnosed him with a 'Fungal Infection in Groin', and prescribed him four medications, including 6 mg tablets of deflazacort to be taken twice daily for eight days. Mr Dullarwar ingested the medication – including the deflazacort tablets – as instructed, but stopped taking the deflazacort tablets a few days before the day of the Match.
 - 14.3. On 10th March 2019, Mr Dullarwar participated in the Match. After the Match he was notified that he was required to undergo drug testing, and he did so readily, without any objection or concern. On the Doping Control Form that Mr Dullarwar signed when he provided his urine sample, in the box provided on the form to declare any medications or supplements used in the previous seven days, he wrote '- NIL – Antibiotics & Cough Syrup for cough & cold'. Mr Dullarwar did not mention the deflazacort tablets on the form but he had listed the medications that he had most recently ingested.

¹ ITF v Sharapova, Independent Tribunal decision dated 6 June 2016, para 68 ('It is clear from the wording of article 10.2.3 that whether conduct is intentional is to be judged on the actual knowledge of the player, not on the basis of what she ought to have known or understood').



15. Based on this evidence, the BCCI accepts that Mr Dullarwar has established, on the balance of probabilities, how the deflazacort found in his sample got into his system, namely, through his use of tablets containing deflazacort for therapeutic reasons in the days prior to the day of the Match, when his urine sample was collected. In these circumstances, the BCCI does not consider that there is any good basis to assert that Mr Dullarwar took the deflazacort with intent to cheat (as defined in BCCI ADR Article 10.2.3). In particular, irrespective of what Mr Dullarwar should have been thinking in respect of his use of medication, the BCCI accepts his assertion that he took the deflazacort tablets merely to treat his infection, and not with the intent to enhance (or with the effect of enhancing) his sports performance,² and that it did not in fact dawn on him that medication prescribed by a doctor might contain a Prohibited Substance. The BCCI therefore accepts that the starting-point under BCCI ADR Article 10.2.1 is a two-year period of ineligibility.
16. BCCI ADR Article 10.2 states that that two-year period of ineligibility may be eliminated or reduced if the conditions set out in Articles 10.4, 10.5 or 10.6 are met. Mr Dullarwar has sought to rely on Article 10.5.1.1, which provides that where (as here) the Prohibited Substance found in the Cricketer's sample is classified as a Specified Substance, and the Cricketer establishes that he bears No Significant Fault or Negligence for its presence in his system, then the two-year period of ineligibility may be reduced to a period between 24 months and 0 months (reprimand only), depending on the Cricketer's 'degree of Fault'. For these purposes:
- 16.1. BCCI ADR Article 2.1.1 is clear that 'it is each Cricketer's personal duty to ensure that no Prohibited Substance enters his/her body. A Cricketer is responsible for any Prohibited Substance or its Metabolites or Markers found to be present in his/her Sample'. And BCCI ADR Article 4.3.2 states: 'Cricketers must therefore ensure that Prohibited Substances do not enter or come to be present in their bodies and that Prohibited Methods are not Used'.
- 16.2. 'Fault' is defined as 'any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Cricketer or other Person's degree of Fault include, for example, the Cricketer's or other Person's experience, whether the Cricketer or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Cricketer and the level of care and investigation exercised by the Cricketer in relation to what should have been the perceived level of risk. In assessing the Cricketer or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Cricketer's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that a Cricketer would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Cricketer only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2'.

² The comment to Article 4.2.2 of the World Anti-Doping Code explains that Specified Substances (such as deflazacort) are 'substances which are more likely to have been consumed by an Athlete for a purpose other than the enhancement of sport performance'.



- 16.3. 'No Significant Fault or Negligence' is defined in the BCCI ADR as follows: 'The Cricketer or Cricketer Support Person establishing that his/her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence,³ was not significant in relationship to the Anti-Doping Rule Violation. Except in the case of a Minor, for any violation of Article 2.1, the Cricketer must also establish how the Prohibited Substance entered his or her system'.
17. Given these provisions, Mr Dullarwar's plea of No Significant Fault or Negligence is to be assessed by considering first how far he departed from his duty under the BCCI ADR to use 'utmost caution' to ensure that he did not ingest any Prohibited Substances.⁴ The CAS jurisprudence is clear that this standard is very onerous, and requires a Cricketer to show that he 'made every conceivable effort to avoid taking a prohibited substance'.⁵ It follows that 'even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence'.⁶ However, to the extent that a Cricketer does depart from this objective standard of utmost caution, he may still be entitled to some mitigation, if he can point to a subjective factor (e.g., youth or inexperience) that limits what could have been expected from him, in light of his personal capacities.
18. If it is determined that the Cricketer's fault was not 'significant' in all the circumstances, then the decision of the CAS Panel in Cilic v ITF, CAS 2013/A/3327, paras 69 *et seq*, gives useful guidance in determining where the Cricketer's fault lies within the 0-24 month range.⁷ It sets out three categories of fault: 'light' (corresponding to a range of 0-8 months); 'normal' (8-16 months); and 'considerable' (16-24 months). The Cricketer's 'objective' fault is the main factor to be used to determine into which category he falls, and then his 'subjective' fault is the main factor to be used to move him up or down within a specific category (or, exceptionally, into a different category).

³ No Fault or Negligence is defined in the BCCI ADR as follows: 'The Cricketer or Cricketer Support Person establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Cricketer must also establish how the Prohibited Substance entered his or her system'.

⁴ See, e.g., Kutrovsky v ITF, CAS 2012/A/2804, para 9.49 ('the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance'); FIFA & WADA, CAS 2005/C/976 & 986, paras 73-75 ('The WADC imposes on the athlete a *duty of utmost caution* to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified').

⁵ Knauss v FIS, CAS 2005/A/847, para 7.3.1; WADA v NSAM et al, CAS 2007/A/1395, para 80 ('The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result').

⁶ Adams v CCES, CAS 2007/A/131, para 155.

⁷ While the Cilic case related to the application of Article 10.4 of the 2009 World Anti-Doping Code, the principles it set out have been adapted to apply to determine where a sanction should be fixed within the 0-24 month range for No Significant Fault pleas established by Article 10.5.1.1 of the 2015 World Anti-Doping Code. See ISU v Malkova et al, CAS 2016/A/4840, para 39.



19. The BCCI has therefore considered to what extent, and why, Mr Dullarwar departed from his duty to use 'utmost caution' to ensure that he ingested no Prohibited Substances. In this context, the following points are relevant:

19.1. All Cricketers have been warned that there is a clear risk that medications may contain substances that are prohibited under the BCCI ADR, and therefore they have a clear duty to ensure that any medical treatment they are given does not infringe the BCCI ADR.

19.1.1. BCCI ADR Article 4.3.2 states: 'Many of the substances on the Prohibited List may appear either alone or as part of a mixture within medications and/or supplements that may be available with or without a physician's prescription. ... In this regard, Cricketers are reminded that, as set out in Article 2.1.1 of the Rules, they are strictly liable for any Prohibited Substances present in Samples collected from them. Cricketers must therefore ensure that Prohibited Substances do not enter or come to be present in their bodies and that Prohibited Methods are not Used'.

19.1.2. BCCI ADR Articles 1.4 and 1.4.2.2 state: 'It is the personal responsibility of each Cricketer (which may not be delegated to any other Person) [...] to comply with the Rules in all respects, including [...] ensuring that any medical treatment he/she receives does not infringe the Rules'.

19.2. The jurisprudence makes clear that this is an onerous duty that is not discharged simply by consulting and relying on the advice of suitably-qualified medical personnel. Instead the Cricketer must inform the medical personnel that he is subject to the BCCI ADR and ask the medical personnel to confirm specifically that the medication he/she is prescribing does not contain any substances prohibited under those rules. Furthermore, even if the medical personnel gives that assurance, the Cricketer must check for himself that the medication he has been prescribed by the doctor does not contain any Prohibited Substances.

19.3. Mr Dullarwar informed the clinic doctor that he was a professional cricketer, but he did not inform the clinic doctor that he was subject to the BCCI ADR, or ask the clinic doctor to confirm specifically that the medication he was recommended did not contain any substances prohibited under the BCCI ADR. In addition, Mr Dullarwar did nothing to check the point for himself (e.g., by conducting Internet research, or by asking any BCCI officials, or by calling the BCCI's dedicated anti-doping helpline [+91 9136694499 / +91 9820556566], which is advertised on the BCCI's official website) whether the medication ingredients included any Prohibited Substances. If he had taken any of those steps, he would surely have avoided committing the ADRV. Mr Dullarwar also failed to disclose the deflazacort tablets he was taking on the Doping Control Form.

20. On the other hand, following the analysis in Cilic, the BCCI considers the following points to be relevant in Mr Dullarwar's favour:

20.1. He did not ingest deflazacort in an effort to enhance his sports performance. Instead he ingested deflazacort in tablet form, as prescribed by a doctor to treat his infection, i.e., purely for a therapeutic purpose.



- 20.2. When the infection developed, Mr Dullarwar did not self-medicate. Instead, he sought the advice of a doctor, and he only took the medication that doctor prescribed for him after properly diagnosing his infection.
- 20.3. Mr Dullarwar believed (albeit mistakenly) that because the medications were prescribed by a doctor, they would not contain any substances prohibited under the BCCI ADR. Accordingly, on the Doping Control Form that he signed when he provided his sample 3135322, he declared that he had been taking 'Antibiotics & Cough Syrup for cough & cold', i.e., he did not make any attempt to hide that he was taking some form of medication, albeit that he failed to identify the deflazacort tablets.
- 20.4. There is no evidence or basis to believe that Mr Dullarwar enjoyed any performance-enhancing benefit from the deflazacort metabolite found in his system on the day of the Match.
- 20.5. Mr Dullarwar has played relatively high-level cricket from a young age. However, he is still relatively young (22 years old) and has had limited anti-doping education (two workshops). These factors provide some explanation for why he failed to do more to prevent his inadvertent ADRV. In particular, they explain why he mistakenly believed that because the medications were recommended by a doctor, they would not contain any substances prohibited under the BCCI ADR.
21. In all of the particular circumstances of this case, given the factors set out at paragraph 20, above, and given in particular Mr Dullarwar's youth, lack of experience and limited anti-doping education – which explain to some extent why he failed to take all the steps required of him – the BCCI is prepared to accept Mr Dullarwar's Article 10.5.1.1 plea of No Significant Fault or Negligence, and to assess his fault in the 'normal' category. However, for the same reasons, and also considering potential comparator cases, including the eight month period of Ineligibility imposed by the BCCI on Mr Abhishek Gupta and the five month period of Ineligibility imposed by the BCCI on Mr Yusuf Pathan (who was more experienced than Mr Dullarwar but whose fault was less), the BCCI considers an eight month period of Ineligibility to be appropriate in all of the circumstances of this case.
22. Under BCCI ADR Article 10.10.3, Mr Dullarwar is entitled to full credit against that period of Ineligibility for the provisional suspension that he has been serving since 26th June 2019. In addition, because Mr Dullarwar promptly admitted his ADRV upon being confronted with it by the BCCI, there is discretion under BCCI ADR Article 10.10.2 to back-date the start date of the period of Ineligibility to the date of sample collection (10th March 2019). The BCCI will exercise that discretion. BCCI ADR Article 10.10.2 also requires Mr Dullarwar to actually serve one half (four months) of the period of Ineligibility, which he will do given that he has been provisionally suspended since 26th June 2019. Therefore, the eight month period of Ineligibility will be deemed to have started to run on 10th March 2019, so that it will end at midnight on 9th November 2019.
23. During his period of Ineligibility, Mr Dullarwar's status is as set out in BCCI ADR Article 10.11, as follows:



10.11.1.1 No Cricketer or Cricket Support Person who has been declared Ineligible may, during the period of Ineligibility, play, coach or otherwise participate or be involved in any capacity in: (a) a Match or any other function, Event or activity (other than authorised anti-doping education or rehabilitation programs) authorised, organised, sanctioned, recognised or supported in any way by the BCCI or by any body that is a member of, or affiliated to, or licensed by the BCCI; or (b) any Match or any other function, Event or activity authorised or organised by any professional league or any international or national level tournament/Event organisation (whether or not the party authorising or organising the Match or Event in question is a Signatory, any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a Signatory's member organisation); (c) any elite or national-level sporting activity funded by a government agency; or (d) a Competition or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by any Signatory, Signatory's member organisation or a club or other member organisation of a Signatory's member organisation. Without prejudice to the generality of the foregoing, such Cricketer or Cricket Support Person shall not, during any period of Ineligibility, be given accreditation for, or otherwise granted access to, any Match, function, Event or activity of the type referred to in this Article and any such accreditation previously issued shall be withdrawn. In addition, the BCCI shall take all steps within its power to have the period of Ineligibility recognised and enforced by all other relevant parties, including all other Signatories pursuant to Article 15 of the World Anti-Doping Code. [...]

10.11.2 As an exception to Article 10.11.1, a Cricketer may return to train with a team or to use the facilities of a club or other member organisation of a Signatory's member organisation during the shorter of: (i) the last two months of the Cricketer's period of Ineligibility; or (ii) the last one-quarter of the period of Ineligibility imposed.

24. Therefore Mr Dullarwar may return to train with his team and/or to use the facilities of any club or other member organisation of the BCCI after midnight on 9th September 2019.
25. In addition, in accordance with BCCI ADR Article 9, all individual results obtained by Mr Dullarwar during the Match are Disqualified, and any individual medals or other prizes awarded to him based on those results are forfeited. In addition, under BCCI ADR Article 10.8, all individual results obtained by Mr Dullarwar from the date of sample collection up until his provisional suspension on 26th June 2019 are also Disqualified, and any individual medals or other prizes awarded to him based on those results are forfeited.

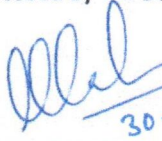
D. Conclusion

26. This decision constitutes the final decision of the BCCI in this matter, issued pursuant to BCCI ADR Article 8.3, and brings these proceedings to an end without any need for a hearing before the Anti-Doping Tribunal. In accordance with BCCI ADR Article 8.3, this decision will be publicly disclosed, including on the BCCI's website.



27. As per BCCI ADR Article 13, each of the ICC and WADA has a right to appeal this decision. In accordance with BCCI ADR Article 8.3, Mr Dullarwar is deemed to have waived his right of appeal against this decision.

Issued by the BCCI on 30th July 2019


30-07-2019





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