



## **DECISION of the FEI TRIBUNAL**

**dated 18 October 2018**

**Positive Controlled Medication Case No.:** 2017/FT48

**Horse:** JEET                      **FEI Passport No:** 103YR21/IND

**Person Responsible/NF/ID:** Dinesh Kumar/10009718/IND

**Event/ID:** CCI1\* - Meerut (IND)/2017\_CI\_1832\_C\_S\_01

**Date:** 12 – 15 October 2017

**Prohibited Substances:** 4-Methylaminophenazone (Metabolite of Dipyrone), Mepivacaine.

### **I. COMPOSITION OF PANEL**

Mr. Cesar Torrente (COL), one member panel

### **II. SUMMARY OF THE FACTS**

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by Person Responsible (PR):**  
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.
- 3. Oral hearing:** None. The PR waived his right for a hearing.

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Articles of the Statutes/Regulations which are applicable:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38

and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2017, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2<sup>nd</sup> edition, 1 January 2012, and Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 (Part I – 3.) ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2016.

FEI Controlled Medication Regulations ("**ECM Rules**"), 2<sup>nd</sup> edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13<sup>th</sup> edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Dinesh Kumar.

**3. Justification for sanction:**

**GRs Art. 143.1:** "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

**GRs Art. 118.3:** "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lungeur shall be an additional Person Responsible."

**ECM Rules Art. 2.1.1:** "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under

Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1.”

#### **EADCMRs APPENDIX 1 – Definitions:**

“Fault. 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 Person Responsible and/or member of the Support Personnel’s degree of Fault include, for example, the Person Responsible’s and/or member of the Support Personnel’s experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible’s and/or member of the Support Personnel’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s and/or member of the Support Personnel’s departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible 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.”

“No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Horse’s system.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his 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 relationship to the EADCM Regulation violation. Except

in the case of a Minor, for any violation of Article 2.1 of the EAD Rules and Article 2.1 of the ECM Rules, the Athlete must also establish how the Prohibited Substance entered the Horse's system."

#### **IV. DECISION**

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

##### **1. Factual Background**

- 1.1 JEET (the "**Horse**") participated at the CCI1\* in Meerut, India, from 12 to 15 October 2017 (the "**Event**"), in the discipline of Eventing. The Horse was ridden by Mr. Dinesh Kumar who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 A blood and urine sample was taken from the Horse during the Event, on 15 October 2017.
- 1.3 Analysis of the blood and urine sample number 5559547 were performed at the FEI-approved Laboratory, Racing Laboratory, The Hong Kong Jockey Club (HKJC), Sha Tin, Hong Kong, China (the "**Laboratory**"). The analysis of the blood sample revealed the presence of 4-Methylaminophenazone and Mepivacaine. Analysis of the urine sample revealed the presence of 4-Methylaminophenazone.
- 1.4 The Prohibited Substances detected are 4-Methylaminophenazone and Mepivacaine. 4-Methylaminophenazone is a metabolite of Dipyrone, a non-steroidal anti-inflammatory drug (NSAID) with anti-inflammatory and analgesic effect. Mepivacaine is a local anaesthetic used for peripheral nerve block and infiltration. Both substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List (the "**FEI List**"). Furthermore, no valid Veterinary Form exists for the substances. Therefore, the positive finding for 4-Methylaminophenazone and Mepivacaine in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

## 2. The Further Proceedings

- 2.1 On 20 November 2017, the FEI Legal Department officially notified the PR through the Indian National Federation ("**IND-NF**"), of the presence of the Prohibited Substance 4-Methylaminophenazone following the laboratory analysis, the possible rule violation and the possible consequences.
- 2.2 The proceedings were initiated under the Administrative Procedure (otherwise referred to as the "Fast Track" procedure) insofar as the respective prerequisites under Article 8.3 of the ECM Rules were fulfilled. The PR was afforded the opportunity to accept the following administrative sanctions: (i) Disqualification of himself and the Horse from the whole Event including the forfeiture of all prizes and prize money won at the Event, (ii) a fine of one thousand five hundred Swiss Francs (CHF 1,500), and (iii) the payment of thousand Swiss Francs (CHF 1,000) in costs. The PR was further informed that in case he did not accept the administrative sanctions offered, the case would be submitted to the Tribunal procedure, and, provided the presence of the substance was established, the Tribunal would impose penalties which would be more or less severe than the administrative sanctions offered.
- 2.3 The PR, after having been made fully aware of the potential risks and consequences of declining the administrative sanctions by the FEI, did not accept the administrative sanctions offered – for reasons outlined in the submission of the PR -, and the case at hand was submitted to the Tribunal procedure.
- 2.4 On 3 October 2018, the FEI Legal Department further officially notified the PR through the IND-NF, of the presence of the second Prohibited Substance detected in the blood, *i.e.*, Mepivacaine, and granted the PR with another opportunity to explain this positive finding. The PR did not provide any explanations with regard to the positive finding for Mepivacaine.

## 3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 20 November 2017, the PR and the owner of the Horse ("**Owner**") were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.

- 3.2 The PR or the Owner did not request that the B-Sample be analysed. Hence, they accepted the results of the A-Sample analysis.

#### **4. Written submission by and on behalf of the PR**

- 4.1 On 30 March 2018, the PR submitted the following explanations for the positive finding.

*"(...) I am not contesting the finding. My horse JEET was administered with "Analgin as part of treatment for Pyrexia few day before the event. The Vet who had administered this drug examined the list of drugs under prohibited drugs and controlled medication before administering it. He ensured me that the drug is not listed and hence got administered. The description on the label of the medicine vial indicated the vial contains "Analgin 30% w/v. It was having no mention about Dipyron or 4-Methylaminophenazone. If the vial was having any mention about any drug mentioned in the list of prohibited/controlled list, I would not have permitted the vet to administer the drug. (...)*

*I am a Junior Commissioned Officer (Warrant Officer) of the Indian Army. I have a riding and competition experience in various national and International events for the past twenty years (Since1998). The horse 'JEET' has even won CCI Two Star Eventing in the year 2016-2017. I was having no intention of doping or violate welfare of the horse. (...)*

*My financial status does not permit me to pay the huge amount imposed on the administrative sanction i.e. total of CHF 2500 which is approx 1,80,000/- INR. Let me submit that my monthly take home salary is a meager CHF 300. Hence any sanction apart from fine may be imposed on me. (...)"*

- 4.2 The PR further requested that administrative sanctions are imposed on him without any fine. The PR suggested that suspension may be imposed in lieu of fine if found necessary.

#### **5. Written Response by the FEI**

- 5.1 On 29 August 2018, the FEI provided its Response to the explanations provided by the PR.
- 5.2 In essence the FEI submitted that:

- a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of 4-Methylaminophenazone, and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. The PR did not dispute the presence of the 4-Methylaminophenazone in the Horse's sample. Accordingly, the FEI respectfully submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the ECM Rules.
- b) Where a Controlled Medication Substance was found in a horse's sample without a valid Veterinary Form, a clear and unequivocal presumption arose under the ECM Rules that it was administered to the horse deliberately in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. To do this, the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability): (i) how the Prohibited Substances entered the Horse's system; and (ii) that he bore No Fault or Negligence for that occurrence, *i.e.*, that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or the Horse's system otherwise contained) a Controlled Medication Substance; or, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied.
- c) The ECM Rules stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR prove how the substance(s) entered into the Horse's system. The FEI submitted that the PR has an obligation to provide clear and convincing evidence that proved how the 4-Methylaminophenazone entered the Horse's system. The PR stated in his submission that the Horse was administered with the medication Analgin as part of the treatment for Pyrexia a few days prior to the

Event. The FEI ascertained that another chemical name for the substance known to the PR as Analgin is Dipyron. The Horse tested positive for 4-Methylaminophenazone which is a metabolite of Dipyron.

- d) Regarding detection times and withdrawal times for the substance in question, the FEI submitted as follows:

*"The detection time for Dipyron is 72 h (3 days), if administered intravenously with a dose of 30 mg/kg as indicated in the FEI List of Detection Times. Detection time is the approximate period of time for which a drug (or its metabolite) remains in a horse's system, such that it can be detected by the laboratory and the FEI provide a list of some detection time only as a guide. A detection time is not the same as a withdrawal time. The withdrawal time for a drug must be decided upon by the treating veterinarian and is likely to be based on the detection time and an added safety margin. This margin should be determined using professional judgment and discretion to allow for individual differences between horses such as size, metabolism, degree of fitness, recent illness or disease etc. to be taken into consideration. The safety margin in most cases should be at least multiplied with 2 i.e. in the case at hand 6 days. The PR submitted that they administered the medication a few days before the Event, however, the PR did not state the exact number of days. Given the common interpretation of the word "few" as being a small number most often two to four, the FEI ascertains that it is more likely than not that the administration of the medication Analgin a few days before the Event resulted in the positive finding. Given that the provided explanation is scientifically plausible the FEI submits that the PR can establish, on the balance of probabilities, how the Prohibited Substance entered into the Horse's system."*

- e) As a result, the FEI submitted that the first prerequisite of Articles 10.4.1/10.5.1 of the ECM Rules was fulfilled in the case at hand.
- f) In terms of the degree of Fault or Negligence by the PR for the rule violation, the starting point of any evaluation was the "personal duty" of the PR following from Article 2.1.1 of the ECM Rules, i.e., his personal duty to ensure that "no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form".
- g) The FEI argued that, through the FEI Clean Sport programme and in particular the "Athletes Guide"<sup>1</sup>, it had gone to considerable lengths

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<sup>1</sup> Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

to communicate relevant information on the EADCMRs to Athletes. It had to be noted in this context that, in the *Glenmorgan decision*<sup>2</sup>, CAS had stated that the Athlete's Guide "contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form" and described the Athlete's Guide as "required reading".

- h) Furthermore, the Sole Arbitrator in the *Royal des Fontaines case*<sup>3</sup> had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows (at para 57):

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument*

*"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"*

*The Sole Arbitrator respectfully agrees."*

- i) In the *Glenmorgan case* (in para 209) the Panel confirmed that the rider was best fit to control the Horse before a competition. "... Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."
- j) The Panel further stated as follows (in para 203):

*"The Panel wishes to emphasize again that the fault or negligence which determines the measure of the Appellant's sanction is not that of the Dr. It is the Appellant's own fault and negligence in not having exercised the standard of care applicable to a PR which, like the non-*

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<sup>2</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

<sup>3</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI

*equine Athlete, is placed at the exercise of "utmost caution". It is the PR's personal duty to ensure that no Banned Substance is present in the Horse's body."*

- k) In light of the stated CAS jurisprudence on this point, the FEI respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bore No (Significant) Fault or Negligence for the Horse's positive test results is a reasonable and justifiable stance. Furthermore, as the CAS jurisprudence confirmed, the rider was, no matter what, the Person Responsible for the horse he competed with, and could not delegate this duty to another person. The PR, therefore, has an obligation to ensure that no Prohibited Substance enters into the horse's system, and must act with the utmost caution to fulfil this duty. Conclusions to be drawn from the case law are that the duty of care is very high and that this duty of care cannot be delegated. In addition, the case law further provides that Persons Responsible are responsible for their Support Personnel and the medical treatments given to their horses by their veterinarians.
- l) The FEI submitted that in the present case the PR gave consent to administer the medication. The PR failed in his personal duty to ensure that no Controlled Medication substance is present in the Horse's body during an Event without a valid Veterinary Form. The PR should have himself checked the medication and its ingredients. A simple google search would show that another chemical name for the substance known to the PR as Analgin is Dipyrrone. When inserted into the FEI Equine Prohibited Substances Database, Dipyrrone returns a positive result for a Controlled Medication. If the PR would have made the necessary check he would have established that the medication is in fact on the FEI List.
- m) In addition, the PR should always choose wisely their treating veterinarians. When making such decisions the PR should take into account not only the veterinarian's ability to provide the best care for the horses but also his/her knowledge of the applicable rules.
- n) Accordingly, and in the absence of additional information, the FEI respectfully submitted that the PR was not entitled to elimination or reduction of the period of Ineligibility under Article 10.4 and/or Article 10.5 of the ECM Rules, and that the applicable period of Ineligibility should be six (6) months.
- o) The FEI also requested that the results of the PR and Horse combination obtained in the Competition be disqualified with all resulting Consequences, including forfeiture of any related medals,

points and prizes. Furthermore, since this was a case with a Controlled Medication Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, might be disqualified in accordance with Article 10.1.2 of the ECM Rules.

- p) Finally, the FEI submitted that in considering the applicable fine and the legal costs, the FEI has taken into account (i) the PR and the Horse being first time offenders; (ii) the PR declining the Administrative procedure solely due to his financial inability to pay the applicable fine and costs; and (iii) the PR's monthly income, equivalent to 300 CHF being "low" in comparison to the applicable fine and costs. Provided that the PR submitted a certificate attesting his monthly income, the FEI was willing to waive the legal costs otherwise applicable in its entirety and proposed a reduction in the fine. The FEI deemed a fine in the amount of 150 CHF appropriate. However, the FEI left it for the discretion of the Tribunal to decide whether or not the PR has established exceptional circumstances/facts and reasons as to why the fine and/or contribution to legal costs to be imposed, if any, should be lower than the "standard" fine and/or contribution to legal costs.

## **6. Further proceedings**

- 6.1 On 3 October 2018, the FEI notified the PR of the corrected Notification Letter, including the positive finding for Mepivacaine, and provided the PR with the opportunity to provide further explanations with regard to this substance.
- 6.2 On 3 October 2018, the PR further submitted that – referring to his previous submissions – he was not able to meet the financial sanctions owing to his poor financial background. Further, he had already forfeited the medal and there was no cash award to forfeit.
- 6.3 On 5 October 2018, the Tribunal granted the PR with the opportunity to submit evidence with regard to his alleged financial situation. Furthermore, the PR was to inform the Tribunal whether he requested for a hearing to be held.
- 6.4. The PR however did not submit any further evidence regarding his financial situation, and he did not request for a hearing to be held. The

PR simply did not answer.

## **7. Jurisdiction**

- 7.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

## **8. The Person Responsible**

- 8.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.

## **9. The Decision**

- 9.1 As stated in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample, when the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of 4-Methylaminophenazone and Mepivacaine in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. The substances are classified as Controlled Medication Substances under the FEI List. The presence of 4-Methylaminophenazone and Mepivacaine during an event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 9.2 The FEI has, therefore, established an Adverse Analytical Finding and has sufficiently proven the objective elements of an offence by the PR, in accordance with Articles 3.1 of the ECM Rules.
- 9.3 The Tribunal has taken note that the FEI only notified the PR of the second Prohibited Substance, *i.e.*, Mepivacaine, on 3 October 2018. However, whether or not the sample contained one (1) or two (2) Prohibited Substances does not change with regard to the rule violation as such; it only counts as one ECM Rule violation. However, the administrative procedure would not have been applicable where two (2) Prohibited Substances are found in the Horse's sample. Ultimately, the Tribunal also recognizes that the PR did not accept the administrative procedure due to his alleged financial situation, *i.e.*,

being unable to pay the fine and cost that comes with an administrative procedure.

- 9.4 In cases brought under Article 2.1 of the ECM Rules, a strict liability principle applies as described in Articles 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that he bore "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 9.5 However, to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system.
- 9.6 The Tribunal takes note of the PR's explanations with regard to the positive finding, namely that the Horse was administered with the medication Analgin as part of the treatment for Pyrexia a few days prior to the Event. The Tribunal takes further note that the FEI ascertains that another chemical name for the substance known to the PR as Analgin is Dipyron, and that the Horse tested positive for 4-Methylaminophenazone which is a metabolite of Dipyron, as well as of the FEI's submission with regard to detection and withdrawal times for this substance. Finally, the Tribunal takes note of the FEI's submission with regard to whether the PR has established how the Prohibited Substance entered the Horse's system, namely that it being scientifically plausible that the medication Analgin a few days before the Event resulted in the positive finding, and thus that the PR could establish, on the balance of probability, how the Prohibited Substance entered into the Horse's system.
- 9.7 The Tribunal agrees with the FEI, and finds that the PR has fulfilled this first hurdle of establishing on a balance of probability, as required under the ECM Rules, how the 4-Methylaminophenazone entered the Horse's system.
- 9.8 Regarding the Mepivacaine, and even though the PR was provided to submit his explanation for the positive finding of this substance, the Tribunal takes note that the PR did not submit any explanation whatsoever as to how this Prohibited Substance entered into the Horse's system.
- 9.9 As a result, the PR has not met the first hurdle in establishing how the Mepivacaine entered the Horse's system. Therefore, the Tribunal does not have to evaluate the PR's degree of fault for the rule violation.

- 9.10 Even if the Tribunal were to evaluate the degree of fault of the PR for the rule violation, the Tribunal would come to the conclusion that No (Significant) Fault or Negligence does not apply in the present case for reasons outlined below.
- 9.11 In this respect, the Tribunal takes note that the PR is an officer in the Indian Army, that the Horse is owned by a public entity, and that the Tribunal presumes that the Owner takes care of the Horse, including with regard to the medicines administered to the Horse. However, charges in the case at hand have only been brought forward against the PR.
- 9.12 In accordance with Article 2.1.1 of the ECM Rules, the Tribunal considers that it is the PR's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an event – such as the Event - without a valid Veterinary Form. The Tribunal finds that the PR has not fulfilled this duty expected from a rider, such as the PR in the case at hand.
- 9.13 As outlined by the FEI, with a simple internet search the PR could have known that another chemical name for the substance known to the PR as Analgin is Dipyrrone, and thus a Prohibited Substance on the FEI List.
- 9.14 In line with its previous decisions, the Tribunal also finds that the PR is responsible for choosing and overseeing his support personnel, including veterinarians, such as the veterinarian in the case at hand. Furthermore, the PR has not provided any information as to how he selected this veterinarian, and with regard to his daily care and routine concerning medical treatments of his horses, *i.e.*, ultimately showing which steps he has undertaken to avoid that any Prohibited Substances enter his horse's systems, and/or procedures put in place for requesting Veterinary Forms where necessary.
- 9.15 Accordingly, the Tribunal finds that the PR has acted in a highly negligent way in performing his duties as competitor. The Tribunal therefore comes to the conclusion that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.
- 9.16 The Tribunal therefore decides to impose a period of Ineligibility of six (6) months, in accordance with Article 10.2 of the ECM Rules.
- 9.17 Regarding fine and costs the Tribunal has taken note of the PR's submission concerning his claimed monthly income. Upon request by the Tribunal the PR has however not submitted any evidence in this regard. In the absence of such proof, the Tribunal decides to impose a fine of

500 CHF, and decides to not impose any costs on the PR, as accepted by the FEI.

## **10. Disqualification**

- 10.1 For the reasons set out above, the Tribunal disqualifies the Horse and the PR from the Competition and the entire Event and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the ECM Rules.

## **11. Sanctions**

- 11.1 As a result of the foregoing, and pursuant to Articles 10.2 of the ECM Rules, the period of Ineligibility imposed on the PR shall be six (6) months.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- 1) The PR shall be suspended for a period of **six (6) months** to be effective immediately and without further notice from the date of the notification of this Decision. Therefore, the PR shall be ineligible through **17 April 2019**.
  - 2) The PR is fined **five hundred Swiss Francs (CHF 500,-)**.
  - 3) No costs shall be imposed on the PR.
- 11.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).
- 11.4 Where a Person Responsible who has been declared Ineligible violates the rule against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article

10.11.2 of the ECM Rules).

11.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

11.6 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

**a. The person sanctioned: Yes**

**b. The President of the NF of the person sanctioned: Yes**

**c. The President of the Organising Committee of the Event through his NF: Yes**

**d. Any other: No**

**FOR THE PANEL**

A handwritten signature in blue ink, appearing to read 'Cesar Torrente', is written over a light blue circular stamp.

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**Mr. Cesar Torrente, one member panel**