

1. Abhinav Mani Manota appealed against his non-selection for the Men's Badminton Singles Event at the Tokyo 2020 Olympic Games.
2. The Tribunal heard the appeal under extreme urgency by teleconference on 5 July 2021. Due to the time demands for confirming the quota place, the Tribunal issued its decision dismissing the appeal on 5 July and advised that the reasons would be provided as soon as possible. These are the Tribunal's reasons for its Decision on the basis of extensive written material and the submissions at the oral hearing.

BACKGROUND

3. The appellant won a quota place for the Men's Singles Badminton Event. On 18 June Badminton New Zealand (BNZ) nominated the appellant to the NZOC for selection.
4. NZOC requested further information from BNZ about the athlete's results and performances which were discussed at a meeting with NZOC on 24 June. On 25 June NZOC advised the appellant he would not be selected as he did not meet the NZOC criteria.
5. The appellant exercised his right to appeal NZOC's decision and on 29 June the parties met on a without prejudice basis. The appellant provided additional results and performance material for discussion. Following the internal appeal process between the parties, NZOC confirmed its position on 30 June.

GROUND OF APPEAL

6. The appeal to the Tribunal was advanced on the grounds that:
 - a. the NZOC selection policy was not properly followed and/or implemented; and
 - b. there was no material on which the NZOC selection decision could reasonably be based.

THE SELECTION CRITERIA

7. The core document at issue was "NZOC Selection Policy Tokyo 2020 Olympic Games" and the relevant clause 3.3.2 provides:

Criteria: Any nominated athlete (or athletes in the case of a pair, crew or relay team) seeking to be selected for the Games Team in an Individual Event(s) must demonstrate to the NZOC's satisfaction that the nominated athlete(s):

- (a) is or are capable of achieving a top 16 placing in the Games in that Individual Event, with the potential to win an Olympic Diploma (top 8 placing); and
 - (b) has or have a track record of sufficient quality and depth that demonstrates that the NZOC believes demonstrates the nominated athletes will be competitive at the Games and will perform to the level specified in clause 3.3.2.a in that Individual Event(s).
8. Clause 3.3.3 refers to evidence that must be produced of performances and results that show the criteria has been satisfied.

DISCUSSION

9. The issue for consideration was whether NZOC applied the selection criteria correctly and the decision was reasonably available on the information provided.
10. The appellant asked that the Tribunal select him to compete due to the imminent deadline to confirm the sport entry place. The appellant argued that NZOC had failed to apply the criteria correctly and applied too high a test by requiring compelling evidence as to capability and potential. It was suggested that NZOC's assessment was flawed because it failed to properly consider BNZ's selectors sport expertise and their specific knowledge of the athlete's ability. In addition, NZOC had failed in that assessment to consider the extenuating circumstances regarding the appellant's inability to travel and compete internationally and without the assistance of a coach.
11. The appellant provided his results and performances during the 2019/2021 qualification period to demonstrate his capability to satisfy the criteria. He currently has a World ranking of 93rd and Olympic qualification ranking of 35th and is New Zealand and Oceania Confederation's top male single's athlete.
12. It was submitted that the non-selection decision was illogical and/or proceeded on a wrong factual basis because the context of the appellant's performances and results had not been correctly assessed. This included the 46 weeks the appellant had been unable to compete internationally, or train against high-ranking international players and forced to compete without a coach in attendance providing tactical advice, support and game analysis. Also, the appellant noted as most events were cancelled or postponed due to the pandemic, he was restricted in his ability to compete which

prevented him from playing at a higher level to achieve ranking points. This absence of competition and the effect on his game were argued to be relevant extenuating factors.

13. It was submitted if the appellant's results and performances are assessed within this context, he has proved the capability required. Upon his return to competition, it is argued his win and performances against higher ranking athletes demonstrated his ability at the international level. It was the view of BNZ selectors the appellant had demonstrated his capability and competitive potential despite losing against higher ranked players because he had scored in double figures and was competitive. In addition, it was noted that players based in Europe and Asia had been able to compete in double the number of events to enable them to produce more results and ranking points compared to the appellant.
14. The BNZ selectors viewed these results as a positive trend in the appellant's overall performance, which would continue to improve with ongoing competition leading up to the Games. The appellant's performances it was said continued to develop, having recently beaten a player, Luka Wraber, who in turn had beaten high ranked players. The appellant submitted this demonstrated what he was capable of and reflected what had occurred at other events as the gaps between top ranked players narrowed, and the potential upset unseeded players were capable of.
15. There was no doubt for the selectors that the appellant's performance was comparable to the standard they had witnessed at other Olympic Games. Further, with coaching support it was submitted this would be an additional positive factor likely leading to increased performance levels by the appellant.
16. The BNZ nomination criteria reflects the NZOC selection policy. While BNZ selectors considered the appellant had satisfied the criteria, it was submitted that the NZOC failed to adequately address reasons for its different conclusion. It was argued that the expert sport specific knowledge of the BNZ selectors had been disregarded by the NZOC selection panel. In the appellant's submission the interpretation of his performances and potential ability had not been understood notwithstanding the two meetings with NZOC. In addition, it was submitted the NZOC failed to consider the appellant's ability to serve as a positive role model for the sport and New Zealand on the world stage.

17. For the respondent, it was submitted the athlete had failed to satisfy the criteria and was therefore ineligible to be selected. In referring to the criteria, NZOC stated the appellant had not demonstrated through his results and performances that he was capable of a top 16 placing. NZOC noted it has the sole discretion whether an athlete should be selected for any New Zealand Olympic Games team.
18. In its assessment of the appellant's results to support selection, the NZOC examined the appellant's attendance at tournaments during the 2019/2021 qualification period. It noted that in facing several competitors that he would likely face at the Games he had been beaten by opponents who were ranked between #16 - #26. NZOC added that his only success during the relevant qualification period had been against a player with an Olympic ranking of #35.
19. The NZOC selection panel consists of experienced sport administrators with long standing periods of service on the selection panel across a broad range of sports. In the background is clear awareness and appreciation of the athlete's effort and sacrifice to ensure athletes are selected that have demonstrated having met the criteria. On 24 June, the selectors advised they had insufficient information to support the appellant's nomination and requested additional information that was discussed at a meeting on 25 June.
20. The NZOC advised that if the performances alone were insufficient the selectors considered other factors to prove capability along with any relevant extenuating circumstances. The NZOC were not satisfied the appellant was capable of achieving a top 16 placing because he had not beaten a player with a world ranking of less than #82 during the qualification period.
21. The selectors while considering other factors such as performance trends, acknowledged the appellant had shown improvement but considered it insufficient to contend a top 16 place. They assessed the appellant's win against Wraber but did not accept the reasoning that Wraber's win against higher ranked players demonstrated that the appellant was capable of also beating these higher ranked players. The selectors noted that in fact the appellant had been beaten by one such opponent, Brice Leverdez at the Toyota Thailand Open. While the NZOC accepted the appellant's argument that unseeded players had caused upset wins in the past, it noted these players were within top 50 world ranking heading into the Games.

22. The NZOC's selectors assessment of extenuating circumstances relating to disrupted international travel and absence of coaching support, while acknowledging a preference for coaches to attend, remained unconvinced this was a significant factor that would contribute to a higher performance standard by the appellant. In addition, it noted that the pandemic had disrupted athletes training and preparation worldwide and considered the appellant's results during the disrupted qualification period to be reasonably consistent and not adversely impacted.
23. The selectors submitted the athlete's conduct was a relevant consideration once the performance standard was met. As the athlete had been confirmed as a good role model, it was not a factor for consideration.
24. Following the appellant's advice of his intention to appeal on 29 June, the NZOC received further information from the appellant and the parties had another meeting. The selectors took the opportunity during the internal appeals process to understand and reassess the context of the appellant's results and performances, other relevant athletes results and competitions during the qualification period.
25. The selectors reconsidered the information and noted the appellant had competed in 18 tournaments during the qualification period. Of the 40 opponents, it assessed the results of 5 that had been allocated quota places against the appellants results to measure his performance capability. It noted that these athletes would be at the Games and therefore provided a good indicator of the appellant's relevant standing.
26. NZOC did not accept the appellant was disadvantaged by players from Asia and Europe being able to compete in more events, as this was a challenge in general faced by all New Zealand athletes. In its view the appellant's appearance at 18 tournaments during the qualification period, including pandemic disruption, was sufficient to enable him to demonstrate the requisite standard.
27. The selectors assessed all the information but were not satisfied the appellant had demonstrated his capability of achieving a top 16 placing at the Games.

CONCLUSION

28. Having weighed all the available material the Tribunal was satisfied unanimously that the NZOC decision was lawfully made and a reasonable conclusion for it to reach.

29. The critical starting point was the criteria in the selection policy. The capability to make Top 16 and Top 8 respectively are starting points from which all factors are assessed. But over a period of days the NZOC selectors engaged with BNZ, received proffered material and professionally and carefully assessed its effect.
30. NZOC has a clear framework for selection which applies to all athletes. Consistency of approach is to be expected. The problems flowing from Covid were not peculiar to Mr Manota. He is an outstanding badminton player but has not demonstrated that he meets the Olympic standard.
31. Accordingly, the Tribunal had no option but to dismiss the appeal.

Dated: 7 July 2021



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Sir Bruce Robertson
Chairman