

IN THE COURT OF SHABEER AHMAD,
CIVIL JUDGE-II, TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 140/1 of 2022
Date of Original Institution: 11.10.2022
Date of Decision: 10.11.2022

Zakaria Khan son of Fazal Malik, resident of Qaum Sheikhan, Tapa Bazeed Khel, Naka Mela, Tehsil Central, District Orakzai.

.....(Plaintiff)

VERSUS

1. **Chairman, NADRA, Islamabad.**
2. **Director, General NADRA KPK Peshawar.**
3. **Assistant Director, NADRA District Orakzai.**

.....(Defendants)

SUIT FOR DECLARATION -CUM- PERPETUAL AND MANDATORY INJUNCTION

JUDGMENT

1. Brief facts of the case in hand are that the plaintiff **Zakaria Khan son of Fazal Malik** has brought the instant suit for declarafion, permanent and mandatory injunction against the defendants, referred hereinabove, seeking declaration therein that correct date of birth of plaintiff is **05.06.1962**, according to his Service Record while it has been wrongly entered as 1968 in his CNIC by the defendants, which is wrong, ineffective upon the rights of the plaintiff and liable to correction. That the defendants were asked time and again to do the aforesaid correction but they refused, hence, the present suit;

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2. Defendants were summoned they appeared through their representative and filed written statement whereby they objected the suit on factual and legal grounds.
3. Divergent pleadings of the parties were reduced into the following issues;


Issues:

1. Whether the plaintiff has got a cause of action?
2. Whether the suit of the plaintiff is within time?
3. Whether the correct date of birth of the plaintiff is **05.06.1962** as per his Service Record while it has been wrongly entered as 1968 in his CNIC by defendants?
4. Whether the plaintiff is entitled to the decree as prayed for?
5. Relief?

Issue wise findings of this court are as under: -

Issue No. 02:

The defendants in their written statements raised their objection that suit of the plaintiffs is time barred but I am the opinion that as per Article 120 of the Limitation Act, 1908 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been


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filed on 11.10.2022. Thus, the same is well within time.

The issue is decided in positive.

Issue No. 03:

The plaintiff alleged in his plaint that the correct date of birth of the plaintiff is 05.06.1962, according to his Service Record whereas, defendants have wrongly entered the same as 1968, which is wrong, ineffective upon the rights of the plaintiff and liable to be corrected.

The plaintiff produced witnesses in whom Mr. Zakarya Khan son of Fazal Malik, the plaintiff himself, appeared as PW-01, who produced his CNIC which is exhibited as Ex. PW-1/1. Further stated that his correct date of birth is 05.06.1962 and the same has been rightly enrolled in his Service Record. The witness has been cross examined but nothing tangible has been extracted out of him. Mr. Hamid Ullah son of Malik Nasr Ullah Jan, appeared as PW-02, who produced the Service Book which is Ex. PW-2/1 (consist of 03 pages) and his CNIC which is Ex. PW-2/2. According to Service Book of the plaintiff, date of birth of the plaintiff is 05.06.1962. During cross examination he stated that the plaintiff has served as Class-IV in Government School, Naka Mela. He

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further stated that the age requirement for Class-IV employee is 18 to 40 years.

In order to counter the claim of the plaintiff, the defendants produced only one witness, the representative of the defendants who appeared as DW-1, who produced Family Tree, RTS Form and CNIC processing detail form of the plaintiff which are exhibited as Ex. DW-1/1 to Ex. DW-1/3 respectively, according to which date of birth of the plaintiff is **05.06.1962**. During cross examination, he stated that parents of the plaintiff are dead. If date of birth of the plaintiff is corrected to **05.06.1962**, there will come an un-natural gap between the plaintiff and his parents but since parents of the plaintiff had died, therefore, it can be corrected.

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Arguments heard and record perused.

After hearing of arguments and perusal of record I am of the opinion that the plaintiff mainly rely on his Service Record in which correct date of birth of the plaintiff is mentioned as **05.06.1962**. The aforesaid document is public document and presumption of truth is attached to it. Thus, the plaintiff established his claim through cogent and reliable evidence, therefore, the issue is decided in positive.

Issue No. 01 &04:

Both these issues are interlinked, hence, taken together for discussion.

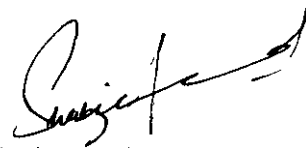
As sequel to my findings on issue No. 3, the plaintiff has got a cause of action and therefore entitled to the decree as prayed for. Thus, both these issues are decided in positive.

RELIEF:

As sequel to my above issue wise findings, the suit of the plaintiffs is hereby decreed as prayed for. Defendants are directed to correct the date of birth of the plaintiff as **05.06.1962** in their record and in the CNIC of the plaintiff. This decree shall not effect the rights of other person or service record if any.

File be consigned to the District Record Room, Orakzai after its proper completion and compilation.

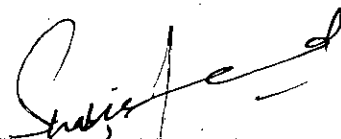
Announced
10.11.2022



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CERTIFICATE

Certified that this judgment consists of five (05) pages, each has been checked, corrected where necessary and signed by me.



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Civil Judge-II,
Tehsil Courts, Kalaya, Orakzai