

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

②  
O.A. NO. 1890/1989

DATE OF DECISION: 11<sup>th</sup> Dec. 89

Shri Harvinder Singh : Petitioners  
and Others

Shri B.S. Mainee : Advocate for the  
Petitioners

Versus

Union of India and : Respondents  
Others

Shri Shyam Moorjani : Advocate for  
Respondents 1 to 4

Shri P. Narasimhan : Advocate for  
Respondents 5 to 22

CORAM:

H Srinivasan  
The Hon'ble Mr. P. Sreenivasan, Member (A)  
The Hon'ble Mr. T.S. Oberoi, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether to be circulated to other Benches?

JUDGEMENT: (JUDGEMENT DELIVERED BY HON'BLE SHRI P. SRINIVASAN, MEMBER(A))

The applicants - There are 5 of them in this application - were recruited in the

P. Srinivasan

...2/-

Northern Railway as Khalasis (Group-D) in or about 1975 and were thereafter promoted as Telecommunication Maintainers (Grade-III) (Group-C) (TCM-III) in 1979. (The post of TCM-III carried a pay scale of Rs 260-400 at that time revised to Rs 950-1500 from 1.1.1986). The next higher post is that of TCM-II (which carries a scale of Rs 1200-2040 from 1.1.1986). Promotion from the post of TCM-III to that of TCM-II is on the basis of seniority, subject to suitability - it is not by selection based on merit. Suitability tests for promotion from TCM-III to TCM-II were held on 17.3.1989 and 18.3.1989 and also on subsequent dates. The result of these tests were collectively announced in a communication dated 15.9.1989 issued by the Divisional Personnel Officer, Northern Railway, New Delhi. According to this communication, out of 41 persons in all who were subjected to the suitability test, 18 were declared suitable for appointment as TCM-II, while all others were declared to have failed. The applicants were among those declared failed. They are aggrieved with this communication. They contend that the suitability test had not been conducted in accordance with the Rules and instructions of the Railway Board and the results had been manipulated to favour some of the candidates who were declared suitable.

P. L. - 8 -

...3/-

They pray that the results of the test announced on 15.9.1989 be quashed with a direction to the railway authorities to hold a fresh test in accordance with the rules and instructions on the subject.

2. The General Manager, the Divisional Railway Manager, the Divisional Signal and Telecommunication Engineer (Telecom) and Shri Siddiqi, Assistant Signal and Telecommunication Engineer, Northern Railway, were arrayed as respondents 1 to 4 in the application as originally filed. When the matter came up for admission before us on 21.9.1989, we observed, inter alia, that if the application were to be allowed, and the test quashed, the 18 persons who were declared suitable for promotion as TCM-II in the impugned communication would be adversely affected and that therefore, they were necessary parties to the litigation. Thereupon these 18 persons have also been impleaded as party - respondents 5 to 22. In the application as originally filed, the applicants had alleged that the results of the suitability test had been manipulated, as juniors had been passed while seniors like the applicants, had been failed. It was further alleged that 2 of the candidates who were selected, were related to highly placed railway officials. The counsel for the applicants made a submission on 4.10.1989 before

*P. J. Y.*

....4/-

another Bench of this Tribunal, of which one of us (Shri T.S. Oberoi) was a Member that he would like to file an affidavit giving more particulars about the 2 candidates who had been selected and making out a case of mala fides against respondent-4, Shri Siddiqi. He has since filed what he calls an "additional affidavit" seeking to show that in order to favour two persons named therein, Shri Siddiqi had failed a large number of persons in the suitability test including the applicants and had thus acted mala fide : this is, in fact, a verified statement signed by the first applicant in this application claiming to represent the other 4 and not an affidavit since it is not " confirmed by oath or affirmation ..... taken before a person having authority to administer such oath or affirmation" (vide definition of an "affidavit" in Black's Legal Dictionary). A common reply has been filed on behalf of respondents 1 to 4 to the original application as well as to the "additional affidavit" signed by the Divisional Personnel Officer (Special), Northern Railway, inter alia denying the charge of favouritism against Respondent No.4 (Shri Siddiqi) in the "additional affidavit". Shri Siddiqi himself has not filed any reply separately to deny the charge. On behalf of respondents 5 to 22 collectively, two

P. L. M.

....5/-

replies have been filed, one to the original application and another to the "additional affidavit" : the latter seeks, inter alia, to repel any suggestion of malafides in the conduct of the suitability test. The applicants have filed rejoinders to all these.

3. In their replies, respondents 1 to 4 as well as respondents 5 to 22 have raised a preliminary objection to the effect that the applicants have not exhausted the departmental remedies available to them before filing the present application. They submit that, in terms of Section 20 of the Administrative Tribunals Act, 1985 (Act), the application should be rejected for this reason alone. Shri Moorjani for respondents 1 to 4 and Shri P. Narasimhan for respondents 5 to 22 reiterated this objection before us.

4. Shri B.S. Maine, learned counsel for the applicants submitted that the impugned communication had grievously affected the career prospects of the applicants and since the applicants had pointed out irregularities and alleged malafides in the conduct of the suitability test, they could not expect justice from the railway authorities, if they made a representation in this regard. Normally, representations against the select list should be made to the authorities within 2 months of the

P. S. V.

....6/-

announcement of the result, but since the applicants felt that the authorities were prejudiced against them, they did not file any such representation and have, instead, approached this Tribunal for justice.

5. Section 20 of the Act does not totally prohibit this Tribunal from entertaining an application when departmental remedies have not been exhausted though ordinarily it is not to be entertained. In this case, considering the apprehension expressed on behalf of the applicants and also the fact that the case has been argued on merits in great detail by both sides, we do not wish to reject this application on this ground. We, therefore, reject the preliminary objection raised on behalf of the respondents.

6. Shri Maine challenged the validity of the suitability test on a large number of grounds. The railway authorities initially called 21 persons for the suitability test, equal in number to the existing and anticipated vacancies of ICM-II. Since promotion as ICM-II was not by selection on the basis of merit, but only on the basis of seniority cum suitability, the practice was to call in the first instance as many persons for the suitability test as the number of existing and anticipated vacancies. Since seniority was the main factor, almost every person called to

*P. S. V*

....7/-

the test would be declared suitable, particularly because, the nature of work of a TCM-II was the same as that of TCM-III. In this case, out of 21 persons called for the test, only 4 were declared passed and all the others were failed. This was an unprecedneted result and therefore, smacked of malafides. The officer who took the test was Shri Siddiqi who had earlier worked under 2 senior officers of the railway, namely, Shri B.N. Bose, Deputy Chief Signal and Telecommunication Engineer (since retired) and Shri Susheel Kumar, Senior Divisional Signal and Telecommunication engineer and he was beholden to both of them. A certain Amit Bose, who is closely related to Shri B.M. Bose and a certain Harish Chander who was closely related to Shri Susheel Kumar were working as TCM-III under Shri Siddiqi. Both of them were too junior in the grade of TCM-II, to come within the first 21 for consideration for the post of TCM-II. Therefore, in order to be able to select Shri Amit Bose and Shri Harish Chandra, Shri Siddiqi failed a large number of persons in the first list of 21 and called 16 more junior persons for the test and almost immediately thereafter enlarged the field by adding 3 more persons to make a total of 19. Shri Amit Bose and Shri Harish Chandra, who figured in this supplementary list of 19 were declared suitable, thereby superseding the applicants who were very

P. S. V.

...8/-

much senior to them and who figured in the first list of 21 candidates.

7. Shri Shyam Moorjani, counsel for respondents 1 to 4 and Shri P. Narasimhan, counsel for respondents 5 to 22 sought to refute the contentions of Shri Maini. They admitted that TCM-II is not a selection post where merit was the sole consideration. However, before a TCM-III could be promoted as TCM-II he had to undergo a suitability test. The suitability test was not a mere formality in the sense that a person would be declared suitable automatically because he was senior. Passing the suitability test was a condition of eligibility for promotion as TCM-II. Among those found suitable in the test, promotion would, however, be made on the basis of seniority and not on the basis of relative merit. Where selection is to be made purely on merit, the person who performs more meritoriously in the test would get promotion first, while in the present case, where promotion was according to seniority subject to suitability, suitability constituted only a qualifying test and once a person qualifies in the test, the fact that he had performed better and had obtained more marks in the suitability test would not give him any advantage over his senior who has also qualified but has obtained lower marks. However, when a person fails to qualify in the suitability test, he cannot claim promotion merely on the ground of his seniority in the lower post because passing the suitability test is an essential condition for

P. S. L.

(15)

promotion. When a suitability test is to be held for promotion as TCM-II, the practice was, as stated on behalf of the applicant, that as many persons are called for the test in the first instance as the number of existing and anticipated vacancies of TCM-II. At the same time, to provide for persons who may absent themselves from the test or who may not qualify in the test from the first list, a stand-by list of an equal number of persons is also prepared and circulated. This is also admitted by the applicant. In fact in the present case also, this practice was followed. When the first circular dated 24.2.1989 was issued announcing the suitability test to be held on 17/18.3.1989, the existing vacancies were 13 and anticipated vacancies were 8 making a total of 21. A list of 21 persons working as TCM-III, on the basis of seniority who were to take the <sup>M</sup> test were included in the said letter and a stand-by list of 21 more persons was also added. When the test was actually held on 17/18-3-1989, 5 persons remained absent. Out of the 16 who appeared in the test, 4 qualified and 12 failed. Immediately, thereafter, 16 persons from the stand-by list were asked to appear for the suitability test to be held on 25.3.1989 by a circular letter dated 21.3.1989. After this letter was issued, it was noticed that 3 out of the 16 were regular

P. Singh

....10/-

absentees in suitability tests held in the past and so, in order to ensure that the effective number of candidates for the test would be 16, a revised list of 19 persons was issued on 23.3.1989 to take the test and the date of test was postponed from 25.3.1989 to 31.3.1989. In the test held on 31.3.1989, 4 out of the 19 remained absent and out of the remaining 15, 11 qualified. Since there were still vacancies of TCM-II (including anticipated vacancies) for which a panel had <sup>M prepared</sup> to be ~~prepared~~, it was decided to hold a further suitability test on 19.4.1989 and for this purpose, 3 more persons were called to take the test by a circular dated 11.4.1989. Out of the 3, 2 qualified and one failed. One more suitability test was again held on 11.5.1989 to which one person was called and he qualified. Thus, in all 18 persons qualified in the suitability tests held on 17/18.3.1989, 31.3.1989, 19.4.1989 and 11.5.1989. There was nothing unusual or unprecedented in only 4 out of the 21 persons in the initial list being declared to have passed the qualifying test. Shri Maine had pointed out that in an earlier qualifying test held for promotion to posts of TCM-II on 21.7.1986 and 22.7.1986, all the 38 persons called for the test had been passed as suitable for appointment. Shri Moorjani submitted that the result was not <sup>M that</sup>

P. S. Iyer

....11/-

comparable to the result in the instant case because all the 38 persons declared to have passed in the test held on 21/22.7.1986 were already working as TCM-II having been promoted to that post without holding a test. It was in these circumstances that they were all declared to have passed and to be suitable for appointment as TCM-II. On the other hand, Shri Moorjani produced the results of similar tests held in 1969, 1970, 1973, 1978, 1979 and 1981, wherein the number of persons called to the test and the number who were declared to have passed were as follows:-

<u>YEAR</u>	<u>NO. CALLED</u>	<u>NO. DECLARED PASSED</u>
1969	12	4
1970	20	3
1973	15	4
1978	24	8
1979	50	21
1981	27	15

Thus, it was the normal feature of suitability tests held for the post of TCM-II that all persons called for the test are not necessarily found suitable: on the other hand, there were quite a few failures. Both Shri Moorjani and Shri Narasimhan <sup>14</sup> denied that the work of a TCM-II is identical with that of a TCM-III. In any case, TCM-II carried a higher pay scale and represented a promotion from TCM-III and was subject to passing the qualifying test and these

P. J. S. K.

....12/-

who did not pass the qualifying test could not be promoted, nor could they contend that they should be declared passed merely because they were senior in the grade of TCM-III.

There was no favouritism involved when a large number of persons including the applicants were failed out of the first list of 21. Merely because Shri Siddiqi had worked earlier under Shri Bose who has retired from service long ago and Shri Susheel Kumar, it cannot be assumed that he failed the applicants only to ensure that the relatives of Shri Bose and Shri Susheel Kumar came into the zone of consideration. For that matter, every officer in Government works under senior officers all his life and it cannot be assumed that merely because he has worked under a senior officer he would favour the relatives of the latter who might be working under him to the detriment of others. No specific fact or incident had been cited in the "additional affidavit" for which Shri Siddiqi <sup>felt</sup> ~~had~~ so beholden to Shri Bose or Shri Susheel Kumar as to go out of his way to select their protegees at the cost of others. In view of this it was not necessary for Shri Siddiqi to file a reply merely to deny a bald and unsupported statement of mala fides against him. It was in the normal course that 21 persons were called for test in the first instance, and thereafter 19 more persons were called followed by two more

P. D. K. K.

.....13/-

tests to which 3 and one more person respectively were called. The tests had been held in accordance with the rules and the results reflected the performance of the candidates therein and the applicants having failed to make the grade had no right to complain of mala fides.

8. On a careful consideration of all the facts we are satisfied that there was nothing unusual in the fact that only 4 out of the 21 persons called to the test in the first instance were declared qualified. Shri Mainee M objected to the production by Shri Moorjani ~~production~~ of circulars giving results of the tests held in 1969, 1970, 1973, 1978, 1979 and 1981 and urged that these should not be taken on record. We find no merit in this objection. All the letters are official documents and contain the results of tests held from time to time. Copies of these letters were handed over to Shri Mainee also. It is not Shri Mainee's contention that these were not genuine documents and his objection is purely technical. It is not also disputed on behalf of the applicant that when a sufficient number of persons do not qualify in a test further tests could be held calling others who are junior to appear therein. This is what happened in this case and we see nothing illegal about it. All that the applicants have to say when they allege malafides against Shri Siddiqi is that Shri B.N. Bose, who was Deputy Chief Signal and Telecommunication

P. J. S. -

.....14/-

120

Engineer in the headquarters office of Northern Railway in New Delhi was in overall charge of the Signal and Telecommunication Training Centre at Ghaziabad where Shri Siddiqi was posted as Instructor for about two years in the past and on this account Shri Siddiqi was beholden to Shri Bose and similarly Shri Susheel Kumar was Principal of the SNT Training Centre at Ghaziabad when Shri Siddiqi was working as Instructor there <sup>He and</sup> because of this, Shri Siddiqi was beholden to Shri Susheel Kumar also. It is not stated that either Shri Bose or Shri Susheel Kumar had conferred any special favour or promotion to Shri Siddiqi to oblige the latter to favour relations of either of them. Malafides cannot be derived from the mere fact that a person had worked under another for some time without anything more to show that the latter had gone out of the way to help the former. In the absence of material to show that Shri Siddiqi was beholden to Shri Bose or to Shri Susheel Kumar for any specific act of favour shown by them to him, we feel that the absence of a reply from Shri Siddiqi denying the charge of mala fides does not in any way advance the case of the applicant. Mala fides should not only be alleged but should be brought home by clear and specific evidence and that has not been done in this case. We, have, therefore, no hesitation in rejecting the allegation of mala fides urged by the applicant as a reason for their failure in the suitability test.

P. Frimble

9. We now turn to the procedural irregularities pointed out by Shri Maine in the conduct of the suitability test which, according to him, vitiated the test. Normally a suitability test should consist of a trade test and an oral test. But at the option of the authority holding the test, a written examination could also be included. In this case a written examination was held. But the candidates were not allotted roll numbers, but were asked to write their names on their answer papers. The Railway Board has issued clear instructions that where written examinations are held, roll numbers should be assigned to candidates and the examiner valuing the answer papers should not know the names of the candidates whose papers he is valuing. Instructions issued by the Railway Board are mandatory and in this case, they had been violated. Further, separate marks had to be awarded for the oral test and no such allotment has been made in the present case.

10. Shri Moorjani countered the contentions of Shri Maine by pointing out that roll numbers were allotted only for written examinations which are conducted for selection posts. When that is done, the persons conducting the examination who keep a record of the roll numbers and the names of the candidates corresponding to such roll numbers <sup>do</sup> ~~does~~ not

P. J. M.

....16/-

themselves himself evaluate the answer papers: evaluation is done by separate examiners. In this case, the conduct of the examination as well as the evaluation of the papers was done by the same person namely Shri Siddiqi and it was not for a post to which selection was to be made on the basis of merit. The instructions of the Railway Board regarding assignment of roll numbers, therefore, had no application to the present case. According to the instructions of the Railway Board, a written examination could be held in place of the oral test and that was done in the present case. Therefore, the question of awarding marks for the oral test separately did not arise in this case.

11. On a careful consideration, we do not find merit in the arguments urged by Shri Maine. The written test was held and the answer papers evaluated by the same person, namely the Assistant Signal and Telecommunication Engineer (ASTE) Shri Siddiqi and this was in accordance with the instructions on the subject. In this situation, the assignment of roll numbers would really be pointless. We have perused the records maintained by respondents 1 to 4 regarding holding of the test and these records were also shown to Shri Maine. The Divisional Signal and Telecommunication Engineer (DSTE) to whom the results of the suitability test were submitted pointed out, inter alia, in his note dated 19.6.1989 that the trade test should have

P. J. - 4

.....17/-

comprised practical and oral tests and written test, if held, should have been part of the oral test. No oral test had been held as the total marks obtained by the candidates were for practical and written tests only. With this note, the DSTE submitted the file to the Senior DSTE who called for the rules on the subject. Accordingly the ASTE, New Delhi - not Shri Siddiqi who was working in Ghaziabad - submitted a note dated 29.6.1989 to the Senior DSTE pointing out that " in lieu of oral test the written test was conducted" and said that this was permissible as per the Railway Establishment Manual of Shri M.L. Jhand at page 99-100. The Senior DSTE referred the matter to the Senior Divisional Personnel Officer (Sr.DPO) with the remark "Pl. let me know the rules in this regard". The Sr. DPO recorded that the statement of the ASTE, as above was correct. Thereafter, the Additional Divisional Railway Manager (ADRM II) signed the file before it went back to the Senior DSTE <sup>H. who, A/ having</sup> apparently having been satisfied on this point, marked the file back to the ASTE on another point with which we will have occasion to deal later. Suffice it to say that ultimately the results were approved and published. Shri Mainee pointed out that the reliance of the ASTE, New Delhi on the Manual of Shri M.L. Jhand should not have been acted upon because no circular of the Railway Board had been quoted. In spite of our best efforts, we have not been able to locate any circular of the Railway Board on the subject.

P. S. - 4

....18/-

But since the view of the ASTE, New Delhi has been specifically concurred in by the Senior Divisional Personnel Officer and the ADRM II, we have no reason to doubt the unanimous view of all of them. This objection of Shri Maine is, therefore, devoid of merit and is rejected.

12. The next objection of Shri Maine is that a certain Ved Kumar who was not called for the suitability test at all was declared suitable in the impugned communication dated 15.9.1989.

13. Shri Moorjani explained that in the first two lists of 21 and 19 persons, the name of Shri Ved Kumar, who was working in the Railway Board as TCM III and who had a lien in that grade in the office of the DRM was left out by oversight even though he was eligible to appear for the suitability test. His name was, therefore, included in the third list of persons called for the test by circular dated 11.4.1989. He undertook the test on 19.4.1989 and was found suitable.

14. In view of the explanation offered by Shri Moorjani, we do not find any merit in Shri Maine's contention. In their application, the applicants have referred only to the initial list of 21 candidates and the subsequent list of 19 candidates/called for the test but they are apparently not aware that three more candidates were called for the suitability test on 11.4.1989 and were therefore, under the mistaken impression that Ved Kumar had not been called to the test at all. We, therefore, reject this contention of Shri Maine.

15. Shri Maine next contended that though the suitability test was held on 17 and 18-3-1989 the results of the tests were announced nearly six months later on 15.9.1989 while according to the instructions of the Railway Board, the results of a trade test had to be declared within a week of its being held. This was a gross violation of the instructions of the Railway Board which could justify our nullifying results of the trade test.

16. Shri Moorjani submitted that the results of the test were not unduly delayed. The last of the tests was held on 11.5.1989 and thereafter the DSTE to whom the result was submitted in June 1989 raised a number of queries which had to be gone into. It was decided to have the answer papers in the written examination re-checked by another officer and this also took time. When the answer papers in the written test were re-evaluated and submitted to the Senior DSTE on 8.9.1989, he put up the file to the Senior DPO who approved the results on 12.9.1989 and thereafter it was announced on 15.9.1989. Ordinarily the results of trade tests are no doubt to be announced within a week of their being held. But a bona fide delay, in announcing the results due to unavoidable reasons cannot vitiate the test itself. In fact often results of suitability tests for the post of TCM-II were delayed beyond one week. Shri Maine himself

P. S. S. Y.

had annexed the results of a test held on 21 and 22-7-1986 which had been issued in December 1986 i.e. more than four months after the test was held.

17. We are not inclined to agree with Shri Mainee that mere delay in announcing the result invalidated the test itself. On a perusal of the relevant file which was also shown to Shri Mainee, we find that the DSTE raised a number of queries. We have already referred to his query regarding oral tests earlier in this order. The DSTE felt that the marking in the written examination had not been properly done. Thereafter, the answer papers for the written examination were forwarded to another ASTE who rechecked them and the marks awarded by him were eventually accepted. We are satisfied that the delay in announcing the result was not due to any attempt to manipulate the marks awarded to the candidates but only to ensure that the papers were re-checked by a different person. We, therefore, reject this contention of Shri Mainee.

18. The scrutiny of the files of the respondent railway also showed that Shri Siddiqi, who valued the written papers in the first instance had actually found applicant no.3, Shiv Ratan and the applicant No.4 Tulsi Ram suitable, but it was the other ASTE who re-checked the papers failed them. This militates against the allegation of mala fides on the part of Shri Siddiqi towards the applicants because he was not responsible atleast in two of their cases for their being failed in the

*P. S. S. I. S. I.*

said test. We may also here refer to a contention by Shri Mainee that the marks awarded to the applicants in the answer books were rubbed off and changed in order to fail them. In order to examine this contention of Shri Mainee we decided to look into the answer paper of one of the applicants, Shri Harwinder Singh. We found that he was awarded 11 marks in the first instance by Shri Siddiqi and this was not rubbed off from the answer paper. When all the answer papers were given for a fresh evaluation by another ASTE, the latter reduced the total marks of Shri Harwinder Singh to 8. This figure has been substituted for the original figure of 11 in the result sheet finally approved. Thus, we find no evidence of the earlier marks being rubbed out and fresh marks being awarded on the answer papers themselves. It was a case of re-evaluation to ensure that the marking was done properly. We find no irregularity in this.

19. The next objection of Shri Mainee was that after the suitability test in 1986 no such test was held till 1989. It was obligatory in the part of the railway authorities to hold such tests at quarterly intervals to fill up vacancies arising from time to time immediately on their occurrence. The delay and the resulting bunching of vacancies over a three year period had brought in more persons into the zone of eligibility enabling the authorities to consider junior persons for promotion in preference to the

R. J. V.

....22/-

(28)

applicants. The delay was deliberate and violated the instructions on the subject issued by the Railway Board.

20. Both Shri Moorjani and Shri Narasimhan opposed the contention of Shri Mainee as not being correct.

20. On a careful consideration, we are unable to agree with Shri Mainee. No doubt it is desirable to hold suitability tests frequently and to avoid bunching of vacancies. But this cannot be made into such an inviolable rule as to invalidate tests held at longer intervals. A circular No.E(NG)-1-78-PM/I/139 dated 23.10.1979 issued by the Railway Board states that "schedules for trade tests should be drawn quarterly for various categories. Every effort should be made to hold trade test twice a year so that no vacancies remained unfilled" (emphasis supplied). We, are, therefore, satisfied that the test held in the present case cannot be declared to be illegal merely because it was held about three years after the earlier test. We, therefore, reject this contention of Shri Mainee.

22. Another objection of Shri Mainee was that persons who were already working as TCM-II had been called for the test. Shri Moorjani admits that by mistake, the names of two persons already working as TCM II were included in the first list of 21 but that in no way affected the interests of those who were working as TCM-III and who had to undergo the test including the applicants. We agree with Shri Moorjani that this

P. S. Y

objection has no merit. Shri Maine then pointed out that the test was held in such a careless fashion that a certain Diwakaran who had been absent from duty for 10 years had been called for the test, even though he was not considered for the last suitability test held in 1984. We do not see how this affected the applicants adversely. In the communication dated 15.9.1989 which is impugned in this application, the remark against Shri Diwakaran was he was absent in the test. This contention of Shri Maine is also therefore rejected.

23. Another objection of Shri Maine was that even Scheduled Caste candidates in the list had been failed thereby violating the directions of the Prime Minister. Shri Moorjani explained that persons were failed in the suitability test on the basis of their performance, but however adequate number of Scheduled Caste candidates had been declared suitable and the reservation in respect of such candidates had been duly observed. We reject this contention also.

24. Finally, Shri Maine called to his aid the note recorded by DSTE on 19.6.1989 on the file of the respondent Railways pointing out irregularities and lacunae in the procedure in conducting the impugned suitability test. We have already referred to some of the remarks of the DSTE and how they were dealt <sup>with</sup>. All the remarks of the DSTE were considered by the higher authorities

P. J. V.

36

satisfactorily before declaring the result of the test and none of them survive for consideration. As against a letter written by a Member of Parliament addressed to the General Manager, Northern Railway, relied on by Shri Mainee, referring to the irregularities complained of in this application, we find in the file produced by the respondent railway, a letter addressed by another Member of Parliament to the Railway Minister complaining of attempts to delay the announcement of the result of the ~~test~~ impugned ~~test~~ in this application. We find that these complaints have been duly dealt with by the senior officers of the Railway and that no serious irregularity has occurred which would justify our quashing the result of the impugned test as announced in the communication dated 15.9.1989 (Annexure A-1, page 30 of the application).

25. Since all the contentions raised on behalf of the applicants fails, the application is dismissed, leaving the parties to bear their own costs.

*P. Srinivasan*  
M  
SRINIVASAN  
(P. SREENIVASAN)  
MEMBER (A)

*T.S. Oberoi*  
11.12.89  
(T.S. OBEROI)  
MEMBER (J)