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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 517/2016 and CM APPL. 2131/2016**

AJAY KUMAR

..... Petitioner

Through: Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Ms. Bharathi Raju, CGSC

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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01.04.2016

1. The petitioner has filed the present petition praying *inter alia* for issuing directions to the respondents/BSF to declare the marks obtained by him in the written examination test for the post of Constable (Crew) in the BSF and permit him to appear in the remaining phases of the said recruitment in the event he has secured more than the cut off marks fixed in the written examination.
2. By a detailed order dated 22.01.2016, taking into consideration the fact that the remaining two phases of the recruitment to the post of

Constable (Crew) were to be conducted between 25th to 30th January, 2016, as an interim measure and without prejudice to the rights of the parties, the petitioner was permitted to participate in the said process, subject to the outcome of the present petition. We are informed by the counsel for the respondents that the petitioner had participated in the second and third phases of the recruitment process, the results whereof have been declared on 12.03.2016 and the petitioner has cleared the said phases. But no challenge has been laid by the petitioner to the decision of the respondents of disqualifying him for having failed to comply with the instructions in the OMR answer sheet.

3. Counsel for the petitioner responds by stating that the petitioner could not lay a challenge to the aforesaid decision taken by the respondents as nothing in that regard had been communicated to him at the time of filing of the present petition. She states that it is only after the counter affidavit has been filed by the respondents that it has transpired that upon evaluation of the petitioner's OMR answer sheet by the scanning machine, it was found that he had left one oval unshaded in the column of date of birth, which was mandatorily to be shaded on the OMR answer sheet. As a result, his name was placed in the rejected list.

4. Counsel for the petitioner states that the petitioner may be permitted to file a fresh petition to assail the aforesaid decision taken by the respondents, as the relief in the present petition stands exhausted.

5. Leave, as prayed for, is granted. The petitioner is granted two weeks' time to file a fresh petition to assail the decision of the respondents to place his name in the rejected list. The respondents shall keep one vacancy

available for the post of Constable (Crew) in the BSF for a period of two weeks.

6. The present petition is disposed of alongwith the pending application.

APRIL 01, 2016
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HIMA KOHLI, J

SUNIL GAUR, J

