

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL – CUM –
LABOUR COURT-II, NEW DELHI**

I.D. NO. 50/2023

Sh. Pankaj Sharma, S/o Sh. Ghanshyam Sharma,
R/o House No. 69, Near Ambedkar Chaupal, Dheerapur,
Nirankari Colony, New Delhi-110009.

VERSUS

Edelweiss Tokio Life Insurance Co. Ltd.,
M-97, B1 & B2, 07th Floor, Himalaya House,
23, K.G. Marg, New Delhi-110001.

ORDER/AWARD

19.05.2026

1. This order shall dispose of the two applications filed by the management: one under section 151 of the CPC, seeking recall of the ex-parte order dated 27.02.2024, and the other application under order II Rule 2 of CPC, seeking dismissal of the present claim.

2. Before proceeding further, it is important to mention here that workman has triggered the process of filing the claim after taking recourse to the conciliation proceedings, wherein the matter could not be resolved. Consequently, Sh. Santosh Kumar, Assistant Commissioner (C), Delhi-II, submitted a failure report at the insistence of the claimant, who want to discontinue the conciliation process. Notice to the management was issued on 25.04.2023, Sh. C.P Malviya, Chief Manager appeared on behalf of the management. Thereafter, despite opportunities, the management failed to appear and he was proceeded ex-parte vide order dated 27.02.2024. Ex-parte evidence was filed. Workman evidence was closed on 16.07.2024. In between Legal Aid Counsel of the claimant had

filed the application for filing additional affidavit of the claimant. Considering the fact that the management had appeared only once through its Chief Manager, this Tribunal thought fit to issue the notice to the management. Pursuant to the said notice, Advocate Sh. Ronakjeet Singh appeared on behalf of the management on 30.04.2025. He was given the copy of the claim statement. On the next date of hearing, the above said applications were filed by the management.

3. In the aforesaid circumstances, both applications are being taken up for disposal, as the claimant has filed replies thereto and arguments have been heard on both the applications. Claimants has filed the reply to the first application, stating that application is not maintainable and deserves to be rejected at the threshold, as management has not given any reason for their non-appearance. In para no. 5, claimant admitted to have filed the two applications by invoking two different jurisdictions: one is under section 33C (2) of the **Industrial Disputes Act, 1947 (hereinafter referred to as "the Act")** and the present proceedings under section 2A of the Act.
4. Considering the fact that the claimant has filed two application, one has been filed under section 33C (2) of the Act before the State Labour Court for calculation of their unpaid wages and the other has been filed under section 2A of the Act before this Tribunal seeking reinstatement with full back wages, application for setting aside of the ex-parte order 27.02.2024 deserves to be allowed, firstly, because the respondent has put his appearance only once and it is the Tribunal who had issued notice to appear upon filing of the application of the claimant for placing on record the additional affidavit. Secondly, it is also possible that the management was under confusion due to the pendency of two cases arising out of the same cause of action. Accordingly, the application under section 151 of CPC is allowed. The ex-parte order dated 27.02.2024 is hereby **recalled and set-aside**.

5. Now, I take up the another application filed by the management under order II rule 2 of the Code of Civil Procedure, 1908, whereby he has made prayer that the claim be dismissed, because the claimant had not included whole of the claim which he is entitled to make in respect to the same cause of action. He has stated that the claimant has filed another industrial dispute on 22.10.2022 vide **LCA No. 1184/2022, titled Pankaj Sharma vs. Edelweiss Tokio Life Insurance Co. before the Court of Sh. Joginder Prakash Nahar, Presiding Officer, Labour Court, Central Delhi** on the similar cause of action in respect of present dispute. As such, he submitted that the claim be dismissed.

6. Claimant has filed the reply to the above said application. He had stated that, present application is not maintainable and deserves to be rejected at the threshold. He submitted that there are two separate causes of actions, which are not at all related with each other. He submitted that he has challenged illegal termination before this Tribunal and has also challenged non-payment of salary as per the terms of contract before Ld. POLC-IX, thus having a separate cause of action. According to him, Section 33C of the Act is concerned with the financial recovery or benefit due from the employer, while the present claim is filed under section 2A of the Act.

7. I have gone through the record of this case. Before proceeding further order II Rule 2 of the CPC is required to be reproduced herein:

Order II Rule 2 of the CPC, 1908-

2. Suit to include the whole claim.-

1. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his

claim in order to bring the suit within the jurisdiction of any Court.

2. Relinquishment of part of claim.-Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion of his claim he shall not afterwards sue in respect of this portion so omitted or relinquished.

3. Omission to sue for one of several reliefs.-A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.-For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

8. It is also important to go through the Ex. WW1/3, which the claimant has exhibited this document at the time of ex-parte argument. He had made prayer about short salary as well as reinstatement.
9. It appears that workman has split his case one under section 33C (2) of the Act and the other for 2A of the Act. He had also taken the recourse in two different jurisdictions, one under the State Labour Court, where the appropriate government is the Government of NCT of Delhi and the other before this Tribunal. Two jurisdictions cannot be invoked on the same cause of action. It appears that the workman intentionally filed two different claims in two different jurisdictions knowing very well that he has to file both of these cases, if he wants, to this Tribunal, because the claim against insurance company has come within the domain of the

Central Government Industrial Tribunal. Moreover, he has to file the whole of the claim in one go, because the demand notice he has claimed the wages which has been unpaid as well as back wages after termination.

10. Order II rule 2 specifically states that if the claimant has foregone one claim, he cannot take another claim. Even, the law of equity is not within the claimant who has not come with clean hand is not entitled to any relief. Claim of the claimant is hit by Order II rule 2 of the CPC because he has filed the claim under section 33C (2) earlier. Hence, application filed by the management under order II rule 2 of the CPC stands allowed. Consequent thereto, claim of the claimant stands dismissed. Award is passed accordingly. A copy of this award is sent to the appropriate government for notification under section 17 of the I.D. Act. Record of this file is consigned to record room.

ATUL KUMR GARG
Presiding Officer
CGIT-Cum-Labour Court-II