

Unpersuasive: on Centre's arguments against elevating Justice Joseph

The [Centre's objections to the elevation](#) of Uttarakhand High Court Chief Justice K.M. Joseph to the Supreme Court are unpersuasive and raise suspicion whether his appointment is being blocked for extraneous reasons. Basically, there are two broad reasons proffered for freezing the appointment. First, that Justice Joseph is much too junior in the all-India list of judges, with 11 Chief Justices ranked above him. Second, that there is an imbalance in the regional representation in the Supreme Court, something that his appointment will only skew by adding another judge from Kerala. Neither of these reasons holds good. Seniority is not the sole consideration while elevating a High Court judge to the apex court. *Inter se* seniority is a consideration when a puisne judge is made a Chief Justice, but it is not sacrosanct in elevation to the Supreme Court. There are quite a few instances of senior judges and Chief Justices being overlooked in favour of a more deserving candidate of outstanding merit. Some of these decisions may evoke criticism, but there is no laid-down norm under which the Supreme Court collegium should draw fresh talent for the highest court only in the order in which an all-India seniority list of High Court judges has been drawn up. That merit is and has been a factor in selection addresses the other argument, that Kerala will have two Supreme Court judges were Justice Joseph to be appointed. There was a time when Kerala had three judges in the apex court; also, other courts have been routinely 'over-represented'.

'Merit trumps seniority in elevation to Supreme Court'

While it is desirable that regional imbalances and under-representation are not glaring, this cannot be cited as a factor to shoot down the candidature of a person otherwise qualified and validly recommended. Not surprisingly, the Centre's decision has been accompanied by suspicions and allegations that Justice Joseph is being targeted for his 2016 judgment quashing the proclamation of President's Rule in Uttarakhand. What happens from now on will depend on how the collegium reacts. In the light of its strong recommendation that Justice Joseph is "more deserving and suitable in all respects than other Chief Justices and senior puisne judges", it will be no surprise if it reiterates the recommendation. Then the government is bound to abide by the collegium's decision. In that event, the Centre should not prolong the controversy further by seeking to block his elevation again. There is a strong perception, even within the judiciary, that the government is much too slow when it comes to approving judicial appointments. A conflict between the judiciary and the executive over particular appointments is not in the public interest. Besides allowing Justice Joseph's appointment to go through, efforts must be made to finalise a revised memorandum of procedure for appointments so that the case of one judge does not turn into a flashpoint for a sustained conflict between the two branches.

Receive the best of The Hindu delivered to your inbox everyday!

Please enter a valid email address.

On Kathua, the BJP is presenting one narrative to Jammu, another to the rest of India

The revival of the Trans-Pacific Partnership, sans U.S., must buttress the free trade debate

END