

Impasse ends: on K.M. Joseph's elevation

Good sense seems to have prevailed at last. [The Centre has cleared the elevation of Justice K.M. Joseph](#) to the Supreme Court, seven months after the five-member collegium first recommended his appointment. The Centre had no option but to elevate the Uttarakhand High Court Chief Justice once the collegium reiterated its original recommendation after the Law Ministry returned his name. The collegium had combined its reiteration of his name with two other names so that three Chief Justices could be elevated in one go. The Centre's objections to Justice Joseph's candidature were unconvincing from the very beginning. It made an issue of his relative lack of seniority among the Chief Justices of the various high courts, adding somewhat curiously that his elevation would give excessive representation to Kerala. It also spoke of an imbalance in regional representation. It was obvious that these were not good enough reasons to turn down his appointment. It only served to strengthen the suspicions that Justice Joseph found himself in disfavour because he was on a Bench that quashed the imposition of President's Rule in Uttarakhand in 2016, a charge the government vehemently denied. Now that his elevation is all set to go through, these issues may not appear to be relevant anymore. However, it is difficult not to see a pattern in the government's conduct. It has been splitting recommended lists and selectively approving proposals from the collegium, while holding back or returning some names. In the case of Justice Joseph, his name was sent along with that of senior advocate Indu Malhotra to the Centre in January. However, three months later, the government cleared only one of the two names, while seeking reconsideration of Justice Joseph's candidature. Such decisions tend to alter the *inter se* seniority among sitting judges, a factor that determines who becomes Chief Justice of India and who joins the collegium.

The Centre's right to seek the reconsideration of a recommendation, on the basis of information available to it, cannot be disputed — but it is worrying that one or two names are held back from a number of batches. The reasons for seeking reconsideration need to be explicitly stated in every such instance. Even in its adherence to the norm that reiteration of a recommendation is binding, the Centre has not been consistent. Recently, it returned a recommendation concerning two appointments to the Allahabad High Court for the second time. The other issue is delay — there is no justification for sitting on files without taking a decision one way or another, particularly given the backlog in the Supreme Court. The current controversy may have come to a close, but the possibility of other flashpoints cannot be ruled out. If the judiciary and the government want to dispel the impression of a prolonged conflict, a fresh memorandum of procedure for appointments has to be agreed upon: it is unclear what exactly is holding it up.

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